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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revisions of Delegations of Authority

AGENCY: Office of the Secretary, Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department of Agriculture (USDA) to reflect an internal reorganization of the pollution prevention, control, and abatement program within USDA.

EFFECTIVE DATE: Effective March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Harwood, Executive Director, USDA Hazardous Materials Policy Council, United States Department of Agriculture, Washington, D.C. 20250, telephone (202) 401–4747.

SUPPLEMENTARY INFORMATION: On January 15, 1999, the Secretary of Agriculture established the USDA Hazardous Materials Policy Council (Council) to direct and coordinate pollution prevention, control, and abatement within USDA. The Council is chaired by an appointee of the Secretary and consists of senior policy representatives of the affected USDA mission areas and agencies and USDA's Office of the General Counsel. By memorandum dated April 14, 1999, the Secretary assigned to the Council lead responsibility for USDA hazardous materials management and Federal facilities compliance activities, with the Council Chairman coordinating program direction with the assistance of an Executive Director. The director of the USDA Hazardous Materials Management Group (HMMG) serves as the Council's Executive Director. The HMMG, which serves as staff to the Council, was placed organizationally in Departmental Administration for administrative support. The Council's Executive Director/HMMG Director reports to the Council Chairman for both management and policy direction. The Assistant Secretary for Administration and the Council Chairman are responsible for presenting the USDA Hazardous Waste Management appropriation budget request to the Office of Management and Budget (OMB) and Congress. The Council Chairman is responsible for reporting on hazardous materials management and Federal facilities compliance program accomplishments to Congress, OMB, and the United States Environmental Protection Agency. Decisions on the allocation of funds to USDA agencies from the USDA central hazardous waste management account are the responsibility of the Council. Finally, the Secretary directed that Departmental Manual (DM) 5600–1, Environmental Pollution Prevention, Control, and Abatement Manual, be revised to reflect these changes in organization and responsibilities. The revisions to DM 5600–1 were issued June 25, 1999. This final rule revises the delegations of authority from the Secretary of Agriculture and general officers of USDA to incorporate the provisions of the Secretary's memoranda and the June 25, 1999, amendments to DM–5600–1.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. In addition, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and, thus, is exempt from the provisions of that Act. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104–121, this rule may be made effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

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

Authority: 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 C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. In § 2.16, paragraph (a)(9) is added to read as follows:

§ 2.16 Under Secretary for Farm and Foreign Agricultural Services.

(a) * * *

(9) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Recommend actions and policies of the loan and grant programs under his or her authority concerning compliance with the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996, Subtitle E of Public Law No. 104–208.

* * * * *

3. In § 2.17, the section heading is revised and paragraph (a)(23) is added to read as follows:

§ 2.17 Under Secretary for Rural Development.

(a) * * *

(23) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and

other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Recommend actions and policies of the loan and grant programs under his or her authority concerning compliance with the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996, Subtitle E of Public Law No. 104–208.

* * * * *

4. In § 2.18, paragraph (a)(7) is added to read as follows:

§ 2.18 Under Secretary for Food Safety.

(a) * * *

(7) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable the USDA agency under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Exercise primary responsibility to regulate drug, pesticide, and environmental contaminants in food products as covered by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*), including the Food Quality Protection Act of 1996, Public Law 104–170, and the Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*), as implemented by the Food Safety and Inspection Service through a Memorandum of Understanding with the United States Department of Health and Human Services, Food and Drug Administration, and the United States Environmental Protection Agency.

* * * * *

5. In § 2.20, paragraph (a)(1)(ii) is revised and paragraphs (a)(1)(ix), (x), and (xi) are added to read as follows:

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) * * *

(1) * * *

(ii) Represent USDA on Regional Response Teams on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*), the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*), the Oil Pollution Act (OPA), as amended (33 U.S.C. 2701 *et seq.*), Executive Order 12580, 3 CFR, 1987 Comp., p. 193, Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Contingency Plan, 40 CFR Part 300.

* * * * *

(ix) Serve on the USDA Hazardous Materials Policy Council.

(x) Recommend actions and policies that enable agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(xi) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

* * * * *

6. In § 2.21, paragraph (a)(10) is added to read as follows:

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) * * *

(10) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Serve as a USDA Environmental Executive responsible for coordinating waste prevention; recycling; and the procurement, acquisition, and use of recycled products and environmentally preferable products, including biobased products, and services pursuant to Executive Order 13101 (dual assignment with the Assistant Secretary for Administration).

* * * * *

7. In § 2.22, paragraph (a)(10) is added to read as follows:

§ 2.22 Under Secretary for Marketing and Regulatory Programs.

(a) * * *

(10) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

* * * * *

8. In § 2.24:

a. Paragraph (a)(3)(i)(I) is removed and paragraphs (a)(3)(i)(J) and (a)(3)(i)(K) are re-designated paragraphs (a)(3)(i)(I) and(a)(3)(i)(J) respectively; and

b. Paragraphs (a)(3)(xi), (a)(3)(xii), and (a)(14) are added to read as follows:

§ 2.24 Assistant Secretary for Administration.

(a) * * *

(3) * * *

(xi) Serve as a USDA Environmental Executive responsible for coordinating waste prevention; recycling; and the procurement, acquisition, and use of recycled products and environmentally preferable products, including biobased products, and services pursuant to Executive Order 13101 (dual assignment with the Under Secretary for Research, Education, and Economics).

(xii) Provide administrative support to the USDA Hazardous Materials Management Group.

* * * * *

(14) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Present, in coordination with the Chairman of the USDA Hazardous Materials Policy Council, the USDA Hazardous Waste Management Appropriation budget request to the Office of Management and Budget and to Congress.

* * * * *

Subpart D—Delegations of Authority to the Other General Officers and Agency Heads

9. In § 2.31, paragraph (p) is added to read as follows:

§ 2.31 General Counsel.

* * * * *

(p) Serve on the USDA Hazardous Materials Policy Council.

* * * * *

Subpart J—Delegations of Authority By the Under Secretary for Natural Resources and Environment

10. In § 2.60, paragraph (a)(35) is revised to read as follows:

§ 2.60 Chief, Forest Service.

(a) * * *

(35) Represent USDA on Regional Response Teams on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*), the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*), the Oil Pollution Act (OPA), as amended (33 U.S.C. 2701 *et seq.*), Executive Order 12580, 3 CFR, 1987 Comp., p. 193, Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Contingency Plan, 40 CFR Part 300.

* * * * *

Dated: March 1, 2000.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 00–5770 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 225 and 226

RIN 0584–AC82

Modification of the ''Vegetable Protein Products'' Requirements for the National School Lunch Program, School Breakfast Program, Summer Food Service Program and Child and Adult Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule updates the requirements for using ''Vegetable Protein Products'' in the National School Lunch Program, School Breakfast Program, Summer Food Service Program, and Child and Adult Care Food Program (the Child Nutrition programs). The major changes are to: rename ''Vegetable Protein Products'' as ''Alternate Protein Products;'' remove the limit on the amount of these products that can be used; eliminate the requirement that alternate protein products be specially fortified; and update the test used to determine protein quality. These changes provide menu planners with more flexibility to incorporate these products into their menus along with the traditional protein sources of meat, poultry and seafood.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. William Wagoner or Ms. Janice Fabina, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302 or by telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

What Was Proposed?

On July 20,1999, the U.S. Department of Agriculture (USDA) published a rule in the **Federal Register** (64 FR 38839) proposing to update the requirements for using vegetable protein products in the Child Nutrition Programs. Under the National School Lunch Act (NSLA) and the Child Nutrition Act of 1966 (CNA), the Secretary of Agriculture is authorized to establish minimum nutritional requirements for meals served in the various Child Nutrition Programs administered by FNS. One important element of establishing these nutritional requirements is determining how various foods, such as vegetable protein products, should be credited under the meals patterns established for the Child Nutrition Programs. Section 9(a) of the NSLA (42 U.S.C. 1758 (a)) requires the Secretary to establish minimum nutritional requirements for the National School Lunch Program (NSLP). Section 13(f) of the NSLA (42 U.S.C., 1761(f)) mandates this requirement for the Summer Food Service Program (SFSP), as does section 17(g)(1)(A) of the NSLA (42 U.S.C. 1766(g)(1)(A) for the Child and Adult Care Food Program (CACFP). Section 4(e) of the CNA incorporates this oversight requirement as a central feature of the School Breakfast Program (SBP).

The following were the major modifications that we proposed:

(1) Change the name from vegetable protein products to alternate protein products and remove the requirement that alternate protein products only be of plant origin;

(2) Remove the requirement that vegetable protein products could only constitute 30 percent (by weight) of the meat/meat alternate component of the food-based menu planning approaches;

(3) Remove the fortification requirement; and

(4) Update the protein quality test to the Protein Digestibility Corrected Amino Acid Score (PDCAAS) from the Protein Efficiency Ratio (PER) test.

We proposed to amend the requirements found in Appendix A, entitled ''Alternate Foods for Meals-Vegetable Protein Products,'' to the following Code of Federal Regulation (CFR) Parts: 7 CFR Part 210, for the NSLP; 7 CFR Part 225, for the SFSP; and 7 CFR Part 226, for the CACFP. Appendix A to Part 210 also applies to 7 CFR Part 220, the SBP. For additional background on the history of vegetable protein products in the Child Nutrition programs, please refer to the proposed rule.

How Long Was the Comment Period for the Proposed Rule?

We originally established a 60-day comment period which would have ended on September 20, 1999. However, potential commentors requested an extension of the comment period to allow them more time to review the proposed changes. We extended the comment period until November 19, 1999 in response to these requests. The extension notice was published in the **Federal Register** on August 25, 1999 (64 FR 46319).

How Many Comments Were Received?

We received 635 comment letters, including a number of e-mails. The following is a breakdown of the types of commentors:

Commentor classification	Number
General Public*	573
State and Local Food Service Including Child Care Providers	17
Food Industry	26
Advocates	19
Total	635

*Includes unaffiliated health professionals.

The vast majority of commentors (619) approved of the proposed changes. The largest group of commentors that approved of the changes in their entirety (355) made the following points:

1. The changes would increase flexibility for menu planners;

2. The current requirements severely restricted the use of vegetable protein products (VPP) in the Child Nutrition programs; and

3. The changes will provide healthful alternatives to meat products. These commentors also noted that the changes are good for consumers, animals, the environment and those administering the Child Nutrition programs, especially child care providers.

Specific comments are discussed in detail below.

What Did Commentors Say About Changing the Name of VPP?

We proposed removing the requirement that protein products used in the Child Nutrition programs be derived only from plant protein sources. Because of this, we proposed using the term ''Alternate Protein Products'' (APP) instead of ''Vegetable Protein Products'' (VPP) to indicate that such products are no longer only vegetable-based.

Only 26 comment letters specifically addressed this provision. Of these, 24 commentors opposed the name change, while two commentors supported it, saying that the term ''APP'' enhances flexibility and recognizes changes in food technology. Those commentors who opposed the name change felt it was not necessary because there are only two possible sources of protein products that are not vegetable-based that could be used in the Child Nutrition programs, i.e., fruit puree and whey protein. Commentors stated that these sources were the only products that could meet the requirements of the protein quality test used. Commentors also felt that these particular products would not be used in sufficient quantities to meet the protein requirements.

We proposed the name change to indicate that the meat alternate requirement could be met with protein sources other than those that were vegetable-based. Also, we did not want to restrict the use of any alternate protein products that might be developed in the future that were not vegetable-based. We believe the term Alternate Protein Products, as opposed to the term Vegetable Protein Products, most accurately reflects the fact that protein is available from a variety of sources including vegetable-based sources. Therefore, we are adopting the name change as proposed without changes.

What Did Commentors Say About Removing the Limit on the Amount of VPP?

We proposed removing the requirement that that VPP could only constitute up to 30 percent of the meat/meat alternate component of the food-based menu planning approaches used in all of the Child Nutrition programs. One reason for this proposed change was because that limitation did not apply to menus planned under the nutrient standard menu planning approaches used in the NSLP and the SBP, thus there was an inconsistency among the menu planning approaches for the school meals programs. Another reason was that the 30 percent limitation was based on the best data available at the time that regulation was issued in 1983. That data indicated that VPP appeared to inhibit the absorption of iron and other nutrients. This is no longer supported by current research.

Only a few comment letters (26) mentioned this issue; 17 supported removing the limit while 9 opposed it. The following concerns were raised by those who opposed the removing the limit:

1. Use of 100% APP indicates that USDA feels such products are the nutritional equivalent to meat and the commentors feel that the protein quality of meat and that of APP are not the same; and

2. If 100% APP products are offered, the commentors felt menu planners must also offer meat, seafood or poultry in addition for those who do not want the menu items that only consist of APP.

In response to comments about varying levels of protein quality, please note we are maintaining the same protein quality test currently in the regulations which requires that protein quality be at least 80 percent that of casein (milk protein). This is the established benchmark for a high quality protein product used by USDA-sponsored programs for the past several years. We are also maintaining the requirement that APP used in the CN programs be at least 18% protein by weight, the level of protein readily available in meat, poultry or seafood. Given these two standards, APP used in the CN programs is limited to products that provide a level and quality of protein that is similar to that provided by the traditional sources of the meat component.

In response to comments about requiring menu planners to offer choices other than those with 100% APP, we are committed to giving menu planners flexibility to meet the various needs of the participants in the various Child Nutrition programs. Many factors go into menu planning for our programs—preferences of those consuming the meals, economics, availability of foods, and the need to meet program meal patterns as well as the nutrition standards, including the Dietary Guidelines for Americans' recommendation that people consume a variety of foods. We stress the importance of schools and institutions offering choices if possible. We also support adoption of the offer versus serve (OVS) provision in the school meals programs which allows children to select the foods they prefer and decline foods they would not eat. For the NSLP, OVS is required (7 CFR 210.10(k)) for senior high school students and is strongly encouraged for younger children. Given these factors, we believe that menu planners will provide choices and variety to the greatest extent possible and that they will use APP appropriately and will take into account the varied dietary demands of *all* program participants.

We are adopting the proposed change to eliminate the limit on use of APP in the Child Nutrition programs as final without change. This decision reflects current research on APP and seeks to enhance the flexibility of menu planners in finding ways to reduce fat and saturated fat in the meals they plan as well as the need to meet the increasingly varied dietary demands of students.

How Will Program Participants Be Able To Identify Menu Items With APP?

Some commentors suggested that we establish a different category for menu items that contain more than 30% APP. These commentors also stated that such products should not be considered as beef, pork, poultry, or fish. Other commentors were concerned that, particularly given food allergies and the special dietary needs of program participants such as vegetarians, the source of the APP be clearly identified. Some commentors suggested that we require a label showing the percentage and source of the APP in a product and whether the product fulfills the requirement for a meat alternate product (e.g., does the product contain more breading than APP?). Other commentors were concerned that APP offered in the Child Nutrition programs be easily identified at the point of service and for parents of children participating in the various programs.

We proposed in the July, 1999, rulemaking that manufacturers document that their products meet the following requirements in order to assure that schools and institutions can determine if the APP used in the Child Nutrition programs meet the protein quality standards:

1. The APP is processed so that some portion of the non-protein constituents of the food is removed;

2. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS); and

3. The APP contains at least 18 percent protein by weight when fully hydrated or formulated.

We did not specify the form of documentation required. For example, the manufacturer could provide

specification sheets, could provide a letter attesting that the requirements were met, or could put a label on the product. While we want to assure that the APP used in the Child Nutrition programs meet our nutritional standards, we do not want to impose a burden on manufacturers to individually label their products unless they choose to do so.

Food product labeling is regulated by both the Food Safety Inspection Service (FSIS) in USDA and by the Food and Drug Administration (FDA) in the Department of Health and Human Services. FSIS labeling regulations are found at Title 9 of the CFR and cover meat, poultry and egg products. FDA labeling requirements are found at Title 21 of the CFR and cover all other non-meat foods such as shellfish, fruit, milk and grain products. Current FSIS and FDA rules require food manufacturers to list, by common name, the ingredients used in the formulation of processed food products on the label for that product. For FSIS, these provisions are found at 9 CFR 317.2f and 9 CFR 381.118; for FDA, at 21 CFR 101.3. Information about the source or type of protein will be clearly indicated in the ingredient listing, such as whey protein concentrate or hydrolyzed soy protein. However, according to FSIS and FDA regulations, percent labeling is voluntary. FNS cannot modify the rules governing labeling of meat and non-meat products since the authority for labeling rests with FSIS and FDA.

Another method available to schools and institutions to determine how to credit APP in the programs comes through the Child Nutrition (CN) labeling program. The CN labeling program (7 CFR Part 210, Appendix C) has reviewed labels of products containing VPP since 1984 and will continue to do so for APP labels. The CN labeling program, which is widely used by the food manufacturers who market their products to the CN programs, provides information on how products are to be credited under the meal patterns established for each program. In this way, schools and institutions have yet another way to determine the content and creditability of the APP items they use.

With regard to the point of service menu labeling, FNS encourages program administrators to provide menus that accurately describe menu items served to students and their parents to assist them in making choices that meet their dietary demands. Clear point of service menu labeling can assist students and their parents in making menu selections consistent with their dietary needs. We also note that children with special dietary needs due to a disability such as a life-threatening reaction to certain foods or ingredients must be accommodated in accordance with §§ 210.10(g)(1), 210.10a(i)(1), 220.8(b)(1), 220.8a(f), 225.16(g)(4) and 226.20(h).

What Did Commentors Say About Eliminating the Fortification Requirement?

Another proposed change was to remove the requirement that APP used in the Child Nutrition programs be fortified with iron and zinc. At the time the original requirements on VPP were established, fortification with iron and zinc was an additional safeguard to further assure that children received adequate nutrients. We did this so that the fully hydrated VPP was similar to meat in both nutrients and the bioavailability of minerals. However, current scientific research indicates that by eating a variety of foods, mineral intake is adequate and our concern is that unrestricted use of *fortified* APP could actually result in excessive intakes of iron and zinc. Eliminating the requirement on fortification allows the food industry to directly market their existing products to schools and sponsors as they would no longer need to develop and maintain a special product exclusively for the CN programs.

Some commentors addressed this proposed change, saying that they were concerned with the elimination of the fortification requirement because of the difficulty in obtaining the necessary nutrients when an entire food category, such as meat, is removed from the diet. They felt that the fortification requirement should be retained especially as they noted that about two-thirds of APP products they surveyed informally were fortified with iron and zinc, suggesting that a fortification requirement is not overly burdensome.

Because we are removing the limit on the use of APP and because of the current research on minerals and total diet, we feel eliminating the specific fortification requirement is warranted. We feel that the food industry is in the best position to determine if and to what extent APP should be fortified based on available research and the needs and preferences of consumers. Further, current data indicates that APP without any special fortification is equivalent to other meat/meat alternates in terms of the nutrients they supply. Also, the School Nutrition Dietary Assessment Study, issued in 1993, showed that school meals exceeded the minimum Recommended Dietary Allowances for both iron and zinc. All meals served in the Child Nutrition programs must meet certain nutrition standards. For school meals, the Dietary Guidelines for Americans must be met and the meals must provide minimum levels of the Recommended Dietary Allowances for specific nutrients, including iron, as well. The meal patterns for all of the programs are designed to provide children and adult participants with a variety of foods and minimum levels of calories and other nutrients. Therefore, we are adopting this provision as proposed without change.

What Was Proposed About Protein Quality?

As we discussed earlier, the proposed rule did not propose any changes to the requirement that the biological quality of the protein in the APP be at least 80 percent that of casein (milk protein). As indicated earlier, this is an established benchmark for high quality protein products allowed by the Child Nutrition Programs. We also did not propose to change the requirement that the protein content of the fully hydrated APP be a minimum of 18 percent by weight. We received only 4 comments on these provisions, all of which supported the protein quality requirements. We are adopting these provisions as proposed without change.

We also proposed to replace the protein quality test, Protein Efficiency Ratio (PER), with the Protein Digestibility Corrected Amino Acid Score (PDCAAS) test. FDA now requires use of the PDCAAS test for all foods intended for all ages except for infants. We proposed use of the PDCAAS test to achieve consistency with FDA regulations and to reflect the latest scientific advances. As discussed in our proposed rule, we are not requiring that the PER test be conducted in determining protein quality of APP for infants since the infant meal pattern is based on specific foods, not the more general food components. Consequently menu planners are unlikely to offer APP to infants.

We received 7 comments on this provision, all of which approved of the change. Therefore, we are incorporating the PDCAAS test into this final regulation as proposed.

What Technical Amendments Were Proposed?

We proposed adding to 7 CFR Part 220, Appendix A, a new section entitled ''Alternate Protein Products.'' We also issued the proposed rule in plain language. We received no comments on either of these changes. Therefore, the proposed language and structure of Appendix A and the addition of the

provisions on APP to Part 220 are adopted as final without change.

We are also amending the Meal Pattern for the various CN programs charts to indicate how APP is credited under the food-based menu planning approaches. This specificity was not needed previously as VPP was blended into other meat/meat alternate products. Because we are removing the 30% limitation, we are making these technical changes in §§ 210.10, 210.10a, 220.8, 220.8a, 225.16, and 226.20. We are also updating the Meal Pattern chart in § 210.10a to reflect the current requirements on offering milk in the lunch program (see 42 U.S.C. 1758 (a)(2)).

We also proposed to make some minor technical amendments to § 210.30, § 215.16, § 220.20, § 225.19, and § 226.26. These amendments would update information about addresses and coverage of FNS' regional offices.

Executive Order 12866

This final rule was determined to be non-significant and is not subject to review by the Office of Management and Budget under Executive Order 12866.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This final rule was reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of FNS has certified that this rule will not have a significant economic impact on a substantial number of small entities. First, there are relatively few companies that supply alternate protein products to the Child Nutrition programs. Secondly, removing the fortification requirement eliminates the burden on manufacturers to develop and market a product specially for use in the Child Nutrition programs. Lastly, menu planners would have greater flexibility to incorporate alternate protein products into their menus along with the traditional protein sources of meat, poultry and seafood.

Executive Order 12372

The National School Lunch Program, Special Milk Program for Children, and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under No. 10.555, 10.556 and 10.553, respectively. The Child and Adult Care Food Program and the Summer Food Service Program are listed under No. 10.558 and No. 10.559, respectively. Each is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule related notice at 48 FR 29112, June 24, 1983.)

Executive Order 12988

This final rule was reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of the provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by State or local governments and, for disputes involving procurements by State agencies and sponsors, any administrative appeal procedures to the extent required by 7 CFR Part 3016.

For the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR § 210.18(q); (2) school food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR § 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR § 235.11(b)) must follow FNS Administrative Review Process as established pursuant to 7 CFR § 235.11(f).

For the Summer Food Service Program, the administrative procedures are set forth under the following regulations: (1) Program sponsors and food service management companies must follow State agency hearing procedures issued pursuant to 7 CFR § 225.13; and (2) disputes involving procurement by State agencies and sponsors must follow administrative appeal procedures to the extent required by 7 CFR § 225.17 and 7 CFR Part 3015.

For the Child and Adult Care Food Program, the administrative procedures are set forth under the following regulations: (1) institution appeal procedures in 7 CFR § 226.6(k); and (2) disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR § 226.22 and 7 CFR 3015.

Paperwork Reduction Act

This final rule contains no new paperwork burdens or information collection requirements which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs—social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

Food and nutrition, Food assistance programs, Grants programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping.

7 CFR Part 220

Children, Food assistance programs, Grant programs—social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

7 CFR Part 225

Food and nutrition, Food assistance programs, Grant programs—health, Infants and children, Labeling,

Reporting and recordkeeping requirements.

7 CFR Part 226

Accounting, Aged, Day care, Food and Nutrition, Food assistance programs, Grant programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 210, 215, 220, 225 and 226 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.10:

a. Revise paragraph (k)(2); and

b. Revise the first sentence in paragraph (k)(3)(i).

The revisions read as follows:

§ 210.10 Nutrition standards for lunches and menu planning methods.

* * * * *

(k) *Food-based menu planning.** * *

(2) *Minimum quantities.* At a minimum, school food authorities choosing to plan menus using the food-based menu planning alternative shall offer all five required food items in the quantities provided in the following chart:

ENHANCED FOOD-BASED MENU PLANNING-MEAL PATTERN FOR LUNCHES

Food Components and Food Items	Minimum requirements				Option for Grades K–3
	Ages 1–2	Preschool	Grades K–6	Grades 7–12	
Milk (as a beverage)	6 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces
Meat or Meat Alternate (quantity of the edible portion as served):					
Lean meat, poultry, or fish	1 ounce	1½ ounces	2 ounces	2 ounces	1½ ounces.
Alternate protein products [1]	1 ounce	1½ ounces	2 ounces	2 ounces	1½ ounces.
Cheese	1 ounce	1½ ounces	2 ounces	2 ounces	1½ ounces.
Large egg	½	¾	1	1	¾.
Cooked dry beans or peas	¼ cup	⅜ cup	½ cup	½ cup	⅜ cup.
Peanut butter or other nut or seed butters	2 tablespoons	3 tablespoons	4 tablespoons	4 tablespoons	3 tablespoons.
Yogurt, plain or flavored, unsweetened or sweetened.	4 ounces or ½ cup.	6 ounces or ¾ cup.	8 ounces or 1 cup.	8 ounces or 1 cup.	8 ounces or ¾ cup.
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:					
Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds equals1 ounce of cooked lean meat, poultry or fish)..	½ ounce=50%	¾ ounce=50%	1 ounce=50%	1 ounce=50%	¾ ounce=50%.
Vegetable or Fruit: 2 or more servings of vegetables or fruits or both.	½ cup	½ cup	¾ cup plus an extra 1/2 cup over a week [2].	1 cup	¾ cup.
Grains/Breads: Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or 1/2 cup of cooked rice, macaroni, noodles, other pasta products or cereal grains.	5 servings per week [2]—minimum of 1/2 day.	8 servings per week [2]—minimum of 1 per day.	12 servings per week [2]—minimum of 1 per day [3].	15 servings per week [2]—minimum of 1 per day [3].	10 servings per week [2]—minimum of 1 per day [3].

[1] Must meet the requirements in appendix A of this part.
[2] For the purposes of this chart, a week equals five days.
[3] Up to one grains/breads serving per day may be a dessert.

(3) *Meat or meat alternate component.* * * *

(i) Enriched macaroni with fortified protein as defined in appendix A of this part may be used to meet part of the meat or meat alternate requirement when used as specified in appendix A of this part. * * *

* * * * *

3. In § 210.10a:

A. Revise the table in paragraph (c); and

b. Revise the first sentence in paragraph (d)(2)(i).

The revisions read as follows:

§ 210.10a Lunch components and quantities for the meal pattern.

* * * * *

(c) Minimum required lunch quantities.* * *

TRADITIONAL FOOD-BASED MENU PLANNING—MEAL PATTERN FOR LUNCHES

Food Components and Food Items	Minimum Quantities				Recommended Quantities
	Group I, ages 1–2 (preschool)	Group II, ages 3–4 (preschool)	Group III, ages 5–8 (K–3)	Group IV, age 9 and older (4–12)	Group V, age 12 and older (7–12)
Milk (as a beverage)	6 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces.
Meat or Meat Alternate (quantity of the edible portion as served):					
Lean meat, poultry, or fish	1 ounce	1½ ounces	1½ ounces	2 ounces	3 ounces.
Alternate protein products[1]	1 ounce	1½ ounces	1½ ounces	2 ounces	3 ounces.
Cheese	1 ounce	1½ ounces	1½ ounces	2 ounces	3 ounces.
Large egg	½	1¾ ounces	1¾ ounces	1 ounces	1½.
Cooked dry beans or peas	¼ cup	⅜ cup	⅜ cup	½cup	¾ cup.
Peanut butter or other nut or seed butters	2 tablespoons	3 tablespoons	3 telephones	4 tablespoons	6 tablespoons.
Yogurt, plain or flavored, unsweetened or sweetened.	4 ounces or ½ cup.	6 ounces or ¾ cups.	6 ounces or ¾ cup.	8 ounces or 1 cup.	12 ounces or 1½.
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:					
Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish).	½ ounce = 50%	¾ ounce = 50%	¾ ounce = 50%	1 ounce = 50%	1½ ounce = 50%.
Vegetable or Fruit: 2 or more servings of vegetables or fruits or both.	½ cup	½ cup	½ cup	¾ cup	¾ cup.
Bread or Bread Alternate: (Servings per week): Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains.	5 servings per week[2]—minimum of ½ day.	8 servings per week[2]—minimum of 1 per day.	8 servings per week[2]—minimum of 1 per day.	8 servings per week[2]—minimum of 1 per day.	10 servings per week[2]—minimum of 1 per day.

[1] Must meet the requirements in appendix A of this part.
[2] For the purposes of this chart, a week equals five days.

(d) *Lunch components.* * * *

(2) *Meat or meat alternate.* * * *

(i) Enriched macaroni with fortified protein as defined in appendix A of this part may be used to meet part of the meat or meat alternate requirement when used as specified in appendix A of this part. * * *

* * * * *

4. In § 210.30, revise paragraphs (b), (c), and (f) to read as follows:

§ 210.30 Regional office addresses.

* * * * *

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 61 Forsyth Street SW, Room 8T36, Atlanta, Georgia 30303.

(c) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 77 West Jackson Boulevard, 20th Floor, Chicago, Illinois 60604–3507.

* * * * *

(f) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 300 Corporate Boulevard, Robbinsville, New Jersey 08691–1598.

* * * * *

5. In Appendix A to Part 210, entitled Alternate Foods for Meals, revise the undesignated center heading ''Enriched Macaroni Products with Fortified Protein'' to read ''I. Enriched Macaroni Products with Fortified Protein.''

6. In Appendix A to Part 210, entitled Alternate Foods for Meals, revise the section entitled ''Vegetable Protein Products'' to read as follows:

Appendix A to Part 210—Alternate Foods for Meals

* * * * *

II. Alternate Protein Products

A. What Are the Criteria for Alternate Protein Products Used in the National School Lunch Program?

1. An alternate protein product used in meals planned under the food-based menu planning approaches in § 210.10(k) or § 210.10a, whichever is applicable, must meet all of the criteria in this section.

2. An alternate protein product whether used alone or in combination with meat or other meat alternates must meet the following criteria:

a. The alternate protein product must be processed so that some portion of the non-protein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.

b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).

c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. (''When hydrated or formulated'' refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).

d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs A2. a through c of this appendix.

e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.

f. For an alternate protein product mix, manufacturers should provide information on:

(1) the amount by weight of dry alternate protein product in the package;

(2) hydration instructions; and

(3) instructions on how to combine the mix with meat or other meat alternates.

B. How Are Alternate Protein Products Used in the National School Lunch Program?

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in § 210.10 or § 210.10a, whichever is applicable.

2. The following terms and conditions apply:

a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

C. How Are Commercially Prepared Products Used in the National School Lunch Program?

Schools, institutions, and service institutions may use a commercially prepared meat or meat alternate product combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. The authority citation for part 215 continues to read as follows:

Authority: 42 U.S.C. 1772, 1779.

2. In § 215.16, revise paragraphs (b), (c), (d), and (f) to read as follows:

§ 215.16 Program information.

* * * * *

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 300 Corporate Boulevard, Robbinsville, New Jersey 08691–1598.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 61 Forsyth Street SW., Room 8T36, Atlanta, Georgia 30303.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 77 West Jackson Boulevard, 20th Floor, Chicago, Illinois 60604–3507.

* * * * *

(f) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, The Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for 7 CFR part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.8, revise paragraph (g)(2) to read as follows:

§ 220.8 Nutrition standards for breakfast and menu planning alternatives.

* * * * *

(g) *Food-based menu planning.* * * *

(2) *Minimum quantities.* At a minimum, schools shall serve meals in the quantities provided in the following chart:

MINIMUM REQUIREMENTS—ENHANCED FOOD-BASED MENU PLANNING ALTERNATIVE FOR BREAKFASTS

Food component/item	Required for			Option for Grades 7–12
	Ages 1–2	Preschool	Grades K–12	
Milk (Fluid) (As a beverage, on cereal or both)	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces
Juice/Fruit/Vegetable: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice.	¼ cup	½ cup	½ cup	½ cup
Select one serving from each of the following components or two from one component:				
Grains/breads (one of the following or an equivalent combination):				
Whole-grain or enriched bread	½ slice	½ slice	1 slice	1 slice.
Whole-grain or enriched biscuit, roll, muffin, etc	½ serving	½ serving	1 serving	1 serving.
Whole-grain, enriched or fortified cereal	¼ cup or ⅓ ounce.	⅓ cup or ½ ounce.	¾ cup or 1 ounce	¾ cup or 1 ounce plus an additional serving of one of the Grains/Breads above.
Meat or Meat Alternates:				
Meat/poultry or fish	½ ounce	½ ounce	1 ounce	1 ounce.
Alternate protein products [1]	½ ounce	½ ounce	1 ounce	1 ounce.
Cheese	½ ounce	½ ounce	1 ounce	1 ounce.
Egg (large)	½	½	½	½.
Peanut butter or other nut or seed butters	1 tablespoon	1 tablespoon	2 tablespoons	2 tablespoons.
Cooked dry beans and peas	2 tablespoons	2 tablespoons	4 tablespoons	4 tablespoons.
Nuts and/or seeds (as listed in program guidance [2]	½ ounce	½ ounce	1 ounce	1 ounce.
Yogurt, plain or flavored, unsweetened or sweetened	2 ounces or ¼ cup.	2 ounces or ¼ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.

[1] Must meet the requirements in appendix A of this part.

[2] No more than 1 ounce of nuts and/or seeds may be served in any one breakfast.

* * * * *

3. In § 220.8a, revise paragraph (a)(2) to read as follows:

§ 220.8a Breakfast components and quantities for the meal pattern.

(a) * * *

(2) *Minimum required breakfast quantities.* Except as otherwise provided in this section and in any appendix to this part, a breakfast eligible for Federal cash reimbursement shall contain at least the per breakfast minimum quantities of each item for the age and grade levels specified in the following table:

MINIMUM REQUIREMENTS—TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE FOR BREAKFASTS

Food component/items	Ages 1–2	Ages 3, 4 and 5	Grades K–12
Milk (Fluid) (As a beverage, on cereal or both)	½ cup	¾ cup	½ pint
Juice/Fruit/Vegetable :[1] Fruit and/or vegetable; or full-strength fruit juice or vegetable juice.	¼ cup	½ cup	½ cup
Select one serving from each of the following components or two from one component:			
Bread/Bread Alternate (one of the following or an equivalent combination) :[2]			
Whole-grain or enriched bread	½ slice	½ slice	1 slice.
Whole-grain or enriched biscuit, roll, muffin, etc	½ serving	½ serving	1 serving.
Whole-grain, enriched or fortified cereal	¼ cup or ⅓ ounce	⅓ cup or ½ ounce	¾ cup or 1 ounce.
Meat or Meat Alternates:			
Meat/poultry or fish	½ ounce	½ ounce	1 ounce.
Alternate protein products.[3]	½ ounce	½ ounce	1 ounce.
Cheese	½ ounce	½ ounce	1 ounce.
Egg (large)	½	½	½.
Peanut butter or other nut or seed butters	1 tablespoon	1 tablespoon	2 tablespoons.
Cooked dry beans and peas	2 tablespoons	2 tablespoons	4 tablespoons.
Nuts and/or seeds (as listed in program guidance).[4]	½	½ ounce	1 ounce.
Yogurt, plain or flavored, unsweetened or sweetened	2 ounces or ¼ cup	2 ounces or ¼ cup	4 ounces or ½ cup.

[1] A citrus juice or fruit or a fruit or vegetable or juice that is a good source of vitamin C (See Menu Planning Guide for School Food Service (PA–1260) is recommended to be offered daily.
[2] See Food Buying Guide for Child Nutrition Programs, PA–1331 (1984) for serving sizes for breads and bread alternates.
[3] Must meet the requirements in appendix A of this part.
[4] No more than 1 ounce of nuts and/or seeds may be served in any one meal.

* * * * *

4. In § 220.20, revise paragraphs (a) through (e) to read as follows:

§ 220.20 Program information.

* * * * *

(a) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 300 Corporate Boulevard, Robbinsville, New Jersey 08691–1598.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 161 Forsyth Street SW., Room 8T36, Atlanta, Georgia 30303.

(c) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 77 West Jackson Boulevard, 20th Floor, Chicago, Illinois 60604–3507.

(d) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242.

(e) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

* * * * *

5. In Appendix A to Part 220, entitled Alternate Foods for Meals, revise the undesignated center heading ''Formulated Grain-Fruit Products'' to read ''I. Formulated Grain-Fruit Products''.

6. Add a new section to Appendix A of Part 220, entitled ''II. Alternate Protein Products'' following the table at the end of the Appendix A to read as follows:

Appendix A to Part 220—Alternate Foods for Meals

* * * * *

II. Alternate Protein Products

A. What Are the Criteria for Alternate Protein Products Used in the School Breakfast Program?

1. An alternate protein product used in meals planned under the food-based menu planning approaches in § 220.8(g) or § 220.8a, whichever is applicable, must meet all of the criteria in this section.

2. An alternate protein product whether used alone or in combination with meat or other meat alternates must meet the following criteria:

a. The alternate protein product must be processed so that some portion of the non-protein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.

b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).

c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. (''When hydrated or formulated'' refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).

d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs A.2. a through c of this appendix.

e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.

f. For an alternate protein product mix, manufacturers should provide information on:

(1) The amount by weight of dry alternate protein product in the package;

(2) Hydration instructions; and

(3) instructions on how to combine the mix with meat or other meat alternates.

B. How Are Alternate Protein Products Used in the School Breakfast Program?

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in § 220.8 or § 220.8a, whichever is applicable. The following terms and conditions apply:

a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

C. How Are Commercially Prepared Products Used in the School Breakfast Program?

Schools, institutions, and service institutions may use a commercially prepared meat or other meat alternate products combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for 7 CFR part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

2. In 225.16:

a. Revise paragraph (d) in its entirety; and

b. Revise the first sentence of paragraph (e)(3).

The revisions read as follows:

§ 225.16 Meal service requirements.

* * * * *

(d) *Meal patterns.* The meal requirements for the Program are designed to provide nutritious and well-balanced meals to each child. Sponsors shall ensure that meals served meet all of the requirements. Except as otherwise provided in this section, the following tables present the minimum requirements for meals served to children in the Program. Children age 12 and up may be served larger portions based on the greater food needs of older boys and girls.

(1) *Breakfast.* The minimum amount of food components to be served as breakfast are as follows:

Food components	Minimum amount
Vegetables and Fruits	
Vegetable(s) and/or fruit(s) or	½ cup.[1]
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruits(s), and juice	½ cup (4 fluid ounces).
Bread and Bread Alternates[2]	
Bread or	1 slice.
Cornbread, biscuits, rolls, muffins, etc. or	1 serving.[3]
Cold dry cereal or	¾ cup or 1 ounce.[4]
Cooked cereal or cereal grains or	½ cup.
Cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate	½ cup.
Milk[5]	
Milk, fluid	1 cup (½ pint, 8 fluid ounces).
Meat and Meat Alternates (Optional)	
Lean meat or poultry or fish or	1 ounce.
Alternate protein product6 or	1 ounce.
Cheese or	1 ounce.
Egg (large) or	½.
Cooked dry beans or peas or	½ cup.
Peanut butter or an equivalent quantity of any combination of meat/meat alternate or	2 tablespoons.
Yogurt, plain or flavored, unsweetened or sweetened	4 ounces or ½ cup.

[1] For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.
[2] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.
[3] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.
[4] Either volume (cup) or weight (ounces), whichever is less.
[5] Milk shall be served as a beverage or on cereal or used in part for each purpose.
[6] Must meet the requirements in appendix A of this part.

(2) *Lunch or supper.* The minimum amounts of food components to be served as lunch or supper are as follows:

Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or poultry or fish or	2 ounces.
Alternate protein products[1] or	2 ounces.

Food components	Minimum amount
Cheese or	2 ounces.
Egg (large) or	1.
Cooked dry beans or peas or	½ cup.[2]
Peanut butter or soynut butter or other nut or seed butters or	4 tablespoons.
Peanuts or soynuts or tree nuts or seed[3] or	1 ounce=50%.[4]
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	8 ounces or 1 cup.
Vegetables and Fruits	
Vegetable(s) and/or fruit(s)[5]	¾ cup total.
Bread and Bread Alternatives[6]	
Bread or	1 slice.
Cornbread, biscuits, rolls, muffins, etc. or	1 serving.[7]
Cooked pasta or noodle products or	½ cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate	½ cup.
Milk	
Milk, fluid, served as a beverage	1 cup (½ pint, 8 fluid ounces).

[1] Must meet the requirements of appendix A of this part.
[2] For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.
[3] Tree nuts and seeds that may be used as meat alternate are listed in program guidance.
[4] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purposes of determining combinations, 1 ounce of nuts or seeds is equal to 1 ounce of cooked lean meat, poultry or fish.
[5] Serve 2 or more kinds of vegetable(s) and/or fruits or a combination of both. Full strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
[6] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.
[7] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.

(3) *Snacks.* The minimum amounts of food components to be served as snacks are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or poultry or fish or	1 ounce.
Alternate protein products[1] or	1 ounce.
Cheese or	1 ounce.
Egg (large) or	½.
Cooked dry beans or peas or	¼ cup[2].
Peanut butter or soynut butter or other nut or seed butters or	2 tablespoons.
Peanuts or soynuts or tree nuts or seeds[3] or	1 ounce.
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	4 ounce or ½ cup.
Vegetables and Fruits	
Vegetable(s) and/or fruit(s) or	¾ cup.
Full-strength vegetable or fruit juice or an equivalent quantity or any combination of vegetable(s), fruits(s) and juice	¾ cup (6 fluid ounces).
Bread and Bread Alternates[4]	
Bread or	1 slice.
Cornbread, biscuits, rolls, muffins, etc. or	1 serving.[5]
Cold dry cereal or	¾ cup or 1 ounce.[6]
Cooked cereal or	½ cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate	½ cup.
Milk[7]	
Milk, fluid	1 cup (½ pint, 8 fluid ounces).

[1] Must meet the requirements in appendix A of this part.
[2] For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.
[3] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

Food components	Minimum amount

[4] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.
[5] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.
[6] Either volume (cup) or weight (ounces), whichever is less.
[7] Milk should be served as a beverage or on cereal, or used in part for each purpose.

* * * * *

(e) *Meat or meat alternate.* * * *

(3) Enriched macaroni with fortified protein may be used to meet part but not all of the meat/meat alternate requirement. * * *

* * * * *

3. In § 225.19, revise paragraphs (a), (b), (c), (d), and (g) to read as follows:

§ 225.19. Regional office addresses.

* * * * *

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 10 Causeway Street, Room 501, Boston, MA 02222–1065.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 300 Corporate Boulevard, Robbinsville, NJ 08691–1598.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 61 Forsyth Street, SW., Room 8T36, Atlanta, GA 30303.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 77 Jackson Boulevard, 20th Floor, Chicago, IL 60604–3507.

* * * * *

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearney Street, Room 400, San Francisco, CA 94108.

4. Revise Appendix A to Part 225, entitled Alternate Foods for Meals, to read as follows:

Appendix A to Part 225—Alternate Foods for Meals

Alternate Protein Products

A. What Are the Criteria for Alternate Protein Products Used in the Summer Food Service Program?

1. An alternate protein product used in meals planned under the provisions in § 225.16 must meet all of the criteria in this section.

2. An alternate protein product whether used alone or in combination with meat or other meat alternates must meet the following criteria:

a. The alternate protein product must be processed so that some portion of the non-protein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.

b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).

c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. (''When hydrated or formulated'' refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).

d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs A. 2. a through c of this appendix.

e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.

f. For an alternate protein product mix, manufacturers should provide information on:

(1) The amount by weight of dry alternate protein product in the package;

(2) Hydration instructions; and

(3) Instructions on how to combine the mix with meat or other meat alternates.

B. How Are Alternate Protein Products Used in the Summer Food Service Program?

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in § 225.20.

2. The following terms and conditions apply:

a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

C. How Are Commercially Prepared Products Used in the Summer Food Service Program?

Schools, institutions, and service institutions may use a commercially prepared meat or meat alternate products combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for 7 CFR part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765, and 1766).

2. In § 226.20:

a. Revise the first sentence of paragraph (a)(2)(ii)(A); and

b. Revise paragraph (c) in its entirety.

The revisions read as follows:

§ 226.20 Requirements for meals.

(a) * * *

(2) * * *

(ii)(A) Lean meat, poultry or fish; alternate protein products; or cheese; or an egg; or cooked dry beans or peas; or peanut butter; or any combination of these foods. * * *

* * * * *

(c) *Meal patterns for children age one through 12 and adult participants.* When individuals over age one participate in the Program, the total amount of food authorized in the meal patterns set forth below shall be provided in order to qualify for reimbursement.

(1) *Breakfast.* The minimum amount of food components to be served as breakfast as set forth in paragraph (a)(1) of this section are as follows:

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 [1]	Adult participants
Milk, fluid	½ cup [2]	¾ cup	1 cup	1 cup.[2]
Vegetables and Fruits or	¼ cup	½ cup	½ cup	½ cup.
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	¼ cup	½ cup	½ cup	½ cup.
Bread and Bread Alternates [3]				
Bread or	½ slice	½ slice	1 slice	2 slices (servings).
Cornbread, biscuits, rolls, muffins, etc.[4] or	½ serving	½ serving	1 serving	2 servings.
Cold dry cereal [5] or	¼ cup or ⅓ ounce.	⅓ cup or ½ ounce.	¾ cup or 1 ounce	1½ cup or 2 ounces.
Cooked cereal or	¼ cup	¼ cup	½ cup	1 cup.
Cooked pasta or noodle products or	¼ cup	¼ cup	½ cup	1 cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup	1 cup.

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[3] Bread, pasta or noodle products, and cereal grains, shall be whole grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole grain or enriched meal or flour; cereal shall be whole grain or enriched or fortified.
[4] Serving sizes and equivalents to be published in guidance materials by FNS.
[5] Either volume (cup) or weight (ounces) whichever is less.

(2) *Lunch.* The minimum amount of food components to be served as lunch as set forth in paragraph (a)(2) of this section are as follows:

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 [1]	Adult participants
Milk, fluid	½ cup [2]	¾ cup	1 cup	1 cup [2].
Vegetables and Fruits [3]				
Vegetables(s) and/or fruit(s)	¼ cup total	½ cup total	¾ cup total	1 cup total.
Bread and Bread Alternates [4]				
Bread or	½ slice	½ slice	1 slice	2 slices (servings).
Cornbread, biscuits, rolls, muffins, etc.[5] or	½ serving	½ serving	1 serving	2 servings.
Cooked pasta or noodle products or	¼ cup	¼ cup	½ cup	1 cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup	1 cup.
Meat and Meat Alternates				
Lean meat or poultry or fish [6] or	1 ounce	1½ ounces	2 ounces	2 ounces.
Alternate protein products [7] or	1 ounce	1½ ounces	2 ounces	2 ounces.
Cheese or	1 ounce	1½ ounces	2 ounces	2 ounces.
Egg (large) or	½	¾	1	1.
Cooked dry beans or peas or	¼ cup	⅜ cup	½ cup	½ cup.
Peanut butter or soynut butter or other nut or seed butters or.	2 tablespoons	3 tablespoons	4 tablespoons	4 tablespoons.
Peanuts or soynuts or tree nuts or seeds [8] or	½ ounce [9]=50%	¾ ounce [9]=50%	1 ounce [9]=50%	1 ounce [9]=50%.
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	4 ounces or ½ cup.	6 ounces or ¾ cup.	8 ounces or 1 cup	8 ounces or 1 cup.

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[3] Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
[4] Bread, pasta or noodle products, and cereal grains, shall be whole grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole grain or enriched meal or flour.
[5] Serving sizes and equivalents to be published in guidance materials by FNS.
[6] Edible portion as served.
[7] Must meet the requirements in appendix A of this part.
[8] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.
[9] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purpose of determining combinations, 1 ounce of nuts or seeds is equal to 1 ounce of cooked lean meat, poultry, or fish.

(3) *Supper.* The minimum amount of food components to be served as supper as set forth in paragraph (a)(3) of this section are as follows:

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 [1]	Adult participants
Milk, fluid	½ cup [2]	¾ cup [2]	1 cup	1 cup.

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 [1]	Adult participants
Vegetables and Fruits [3]				
Vegetables(s) and/or fruit(s)	¼cup total	½ cup total	¾ cup total	1 cup total.
Bread and Bread Alternates [4]				
Bread or	½ slice	½ slice	1 slice	2 slices (servings).[5]
Cornbread, biscuits, rolls, muffins, etc.[5] or	½ serving	½ serving	1 serving	2 servings.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup	1 cup.
Meat and Meat Alternates				
Lean meat or poultry or fish [6] or	1 ounce	1½ ounces	2 ounces	2 ounces.
Alternate protein products [7] or	1 ounce	1½ ounces	2 ounces	2 ounces.
Cheese or	1 ounce	1½ ounces	2 ounces	2 ounces.
Egg (large) or	½	¾	1	1.
Cooked dry beans or peas or	¼ cup	⅜ cup	½ cup	½ cup.
Peanut butter or soynut butter or other nut or seed butters or.	2 tablespoons	3 tablespoons	4 tablespoons	4 tablespoons.
Peanuts or soynuts or tree nuts or seeds [8] or	½ ounce [9]=50%	¾ ounce [9]=50%	1 ounce [9]=50%	1 ounce [9]=50%.
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	4 ounces or ½ cup.	6 ounces or ¾ cup.	8 ounces or 1 cup	8 ounces or 1 cup.

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[3] Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
[4] Bread, pasta or noodle products, and cereal grains, shall be whole grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole grain or enriched meal or flour.
[5] Serving sizes and equivalents to be published in guidance materials by FNS.
[6] Edible portion as served.
[7] Must meet the requirements in appendix A of this part.
[8] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.
[9] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purpose of determining combinations, 1 ounce of nuts or seeds is equal to 1 ounce of cooked lean meat, poultry, or fish.

(4) *Supplemental food.* The minimum amount of food components to be served as supplemental foods as set forth in paragraph (a)(4) of this section are as follows. Select two of the following four components. (For children, juice may not be served when milk is served as the only other component.)

Food Components [1]	Age 1 and 2	Age 3 through 5	Age 6 through 12 [2]	Adult participants
Milk, fluid	½ cup	½ cup	1 cup	1 cup.
Vegetables and Fruits				
Vegetables(s) and/or fruit(s) or	½ cup	½ cup	¾ cup	½ cup.
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	½ cup	½ cup	¾ cup	½ cup.
Bread and Bread Alternates [3]				
Bread or	½ slice	½ slice	1 slice	1 slice (serving).
Cornbread, biscuits, rolls, muffins, etc [4] or	½ serving	½ serving	1 serving	1 serving.
Cold dry cereal or	¼ cup or ⅓ ounce.	⅓ cup or ½ ounce.	¾ cup or 1 ounce	¾ cup or 1 ounce.
Cooked cereal [5] or	¼ cup	¼ cup	½ cup	½ cup.
Cooked pasta or noodle products or	¼ cup	¼ cup	½ cup	½ cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup	½ cup.
Meat and Meat Alternates				
Lean meat or poultry or fish [6] or	½ ounce	1½ ounces	2 ounces	2 ounces.
Alternate protein products [7] or	½ ounce	1½ ounces	2 ounces	2 ounces.
Cheese or	½ ounce	1½ ounces	2 ounces	2 ounces.
Egg (large) or	½	½	½	½.
Cooked dry beans or peas or	⅛ cup	⅛ cup	¼ cup	¼ cup.
Peanut butter or soynut butter or other nut or seed butters or.	1 tablespoon	1 tablespoon	2 tablespoons	2 tablespoons.
Peanuts or soynuts or tree nuts or seeds [8] or	½ ounce	½ ounce	1 ounce	1 ounce.
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	2 ounces or ¼ cup.	2 ounces or ¼ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.

[1] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

[2] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[3] Bread, pasta or noodle products, and cereal grains, shall be whole grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole grain or enriched meal or flour; cereal shall be whole grain or enriched or fortified.
[4] Serving sizes and equivalents to be published in guidance materials by FNS.
[5] Either volume (cup) or weight (ounces) whichever is less.
[6] Edible portion as served.
[7] Must meet the requirements in Appendix A of this Part.
[8] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

* * * * *

3. In § 226.26, revise paragraphs (b), (c), (d), and (g) to read as follows:

§ 226.26 Program information.

* * * * *

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 300 Corporate Boulevard, Robbinsville, NJ 08691–1598.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 61 Forsyth Street, SW., Room 8T36, Atlanta, GA 30303.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 77 Jackson Boulevard, 20th Floor, Chicago, IL 60604–3507.

* * * * *

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearney Street, Room 400, San Francisco, CA 94108.

3. Revise Appendix A to Part 226, entitled Alternate Foods for Meals, to read as follows:

Appendix A to Part 226—Alternate Foods for Meals

Alternate Protein Products

A. *What are the criteria for alternate protein products used in the Child and Adult Care Food Program?*

1. An alternate protein product used in meals planned under the provisions in § 226.20 must meet all of the criteria in this section.

2. An alternate protein product whether used alone or in combination with meat or meat alternate must meet the following criteria:

a. The alternate protein product must be processed so that some portion of the non-protein constituents of the food is removed. These alternate protein products must be safe and suitable edible products produced from plant or animal sources.

b. The biological quality of the protein in the alternate protein product must be at least 80 percent that of casein, determined by performing a Protein Digestibility Corrected Amino Acid Score (PDCAAS).

c. The alternate protein product must contain at least 18 percent protein by weight when fully hydrated or formulated. (''When hydrated or formulated'' refers to a dry alternate protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added).

d. Manufacturers supplying an alternate protein product to participating schools or institutions must provide documentation that the product meets the criteria in paragraphs A.2. through c of this appendix.

e. Manufacturers should provide information on the percent protein contained in the dry alternate protein product and on an as prepared basis.

f. For an alternate protein product mix, manufacturers should provide information on:

(1) The amount by weight of dry alternate protein product in the package;

(2) Hydration instructions; and

(3) Instructions on how to combine the mix with meat or other meat alternates.

B. *How are alternate protein products used in the Child and Adult Care Food Program?*

1. Schools, institutions, and service institutions may use alternate protein products to fulfill all or part of the meat/meat alternate component discussed in § 226.20.

2. The following terms and conditions apply:

a. The alternate protein product may be used alone or in combination with other food ingredients. Examples of combination items are beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

b. Alternate protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form. The moisture content of the fully hydrated alternate protein product (if prepared from a dry concentrated form) must be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

C. *How are commercially prepared products used in the Child and Adult Care Food Program?*

Schools, institutions, and service institutions may use a commercially prepared meat or meat alternate product combined with alternate protein products or use a commercially prepared product that contains only alternate protein products.

Dated: March 2, 2000.

Samuel Chambers, Jr.,

Administrator, Food And Nutrition Service.

[FR Doc. 00–5580 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV00–955 2 FIR]

Vidalia Onions Grown in Georgia; Changing the Term of Office and Nomination Deadlines

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule changing the term of office for the Vidalia Onion Committee (Committee), and the time for conducting and submitting Committee nominations under the Vidalia onion marketing order. The marketing order regulates the handling of Vidalia onions grown in Georgia and is administered locally by the Committee. This rule continues in effect the change in the term of office from a 24-month period beginning September 16 and ending September 15, to a 24-month period beginning January 1 and ending December 31. It also continues in effect the change in the month for conducting and submitting Committee producer nominations from August to October of each year, and for the public member and alternate member from November 1 to February 15. These changes are expected to improve Committee and program operations.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order

Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect the change in the term of office from a 24-month period beginning September 16 and ending September 15, to a 24-month period beginning January 1 and ending December 31. It also continues in effect the change in the times for conducting and submitting Committee producer nominations from August 1 and 15, to October 1 and 15, respectively, each year, and for the public member and alternate member from November 1 to February 15. These changes are expected to improve Committee and program operations.

Section 955.21 of the order provides that the term of office for Committee members and alternates begins on September 16, or such other period as the Committee may recommend and the Secretary approves. In addition, § 955.22 provides that the Committee shall hold or cause to be held not later than August 1 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers for the purpose of designating one nominee for each position as member and for each position as alternate member of the Committee which is vacant, or which is about to become vacant. Nominations for members and alternates are required to be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than August 15 of each year, or by such date as may be specified by the Secretary. That section further provides that the producer members shall nominate the public member and alternate member at the first meeting following the selection of members for a new term of office. The members and alternates serve two-year terms of office and approximately one-half of the total Committee membership is nominated and selected each year. Nominations for the public member and alternate member are required to be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than November 1, or such other date as may be specified by the Secretary.

An interim final rule was published in the **Federal Register** on September 3, 1999 (64 FR 48243), which changed the fiscal period established under the order to a calendar year basis (January 1–December 31) from September 16–September 15 to more closely coincide with the Vidalia onion marketing season. That interim final rule has been adopted, without change, as a final rule published in the **Federal Register** on December 27, 1999 (64 FR 72265). The new fiscal period is specified in § 955.113.

Over the past decade, technological changes in the industry, including the adoption of Controlled Atmosphere (CA) storage of Vidalia onions by three-fourths of the industry handlers, have extended the harvesting and marketing season from April through June to an almost year-round basis. While there are some added storage costs and losses due to shrinkage with CA storage, these costs are more than offset by prices received for Vidalia onions during the holiday season (November and December).

On September 30, 1999, the Committee unanimously recommended that the term of office continue to be established on the same basis as the fiscal period. This rule continues in effect the change in the term of office of Committee members and alternate members from a 24-month period beginning September 16 and ending September 15, to a 24-month period beginning January 1 and ending December 31. The changed term of office is established in § 955.121. Also, for the eight members and alternates whose terms of office were scheduled to end on September 15, 1999, their terms of office continued through December 31, 1999, or until qualified successors are selected. These positions on the Committee were filled by the Secretary on February 24, 2000.

The Committee also recommended changes in the times for conducting and submitting Committee producer member and alternate member nominations to maintain the same approximate nomination deadlines as provided currently. The dates changed from August 1 and August 15 to October 1 and October 15, respectively, and are specified in § 955.122. The deadline for submitting nominations to the Secretary for the public member and alternate changed from November 1 to February 15 to provide the same amount of time for submitting nominations as previously provided after the newly selected Committee's first meeting sometime after January 1. These changes are expected to improve Committee and program operations.

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

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

There are approximately 133 producers of Vidalia onions in the production area and approximately 86 handlers subject to regulation under the

marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on the Georgia Agricultural Statistical Service and committee data, the average price for fresh Vidalia Onions during the 1998–99 season was $15.45 per 50-pound bag, or equivalent and shipments totaled 3,617,017 bags. Many Vidalia onion handlers ship other vegetable products which are not included in the committee data, but would contribute further to handler receipts.

Using the average price, about 97.4 percent of Vidalia Onion handlers could be considered small businesses under the SBA definition. The majority of Vidalia Onion producers and handlers may be classified as small entities.

This rule continues in effect § 955.121 to change the two-year term of office to January 1–December 31 from September 16–September 15 to keep the term of office on a fiscal year basis. It also continues in effect § 955.122 to modify the deadlines when nominations are to be held and reports of the nominations are to be made to the Secretary. The changed deadlines provide the same amount of time for conducting and submitting nominations for producer members and alternates and for the public member and alternate as were provided previously. For producer member and alternate members, the time for conducting nominations was changed from August 1 to October 1, and the time for submitting the nominations to Secretary was changed from August 15 to October 15. The time for submitting the public member and alternate public member nominations was changed from November 1 to February 15 for a new term of office. Also, for the eight Committee members and alternates whose terms of office were scheduled to end on September 15, 1999, their terms of office continued through December 31, 1999, or until qualified successors were selected. These positions on the Committee were filled by the Secretary on February 24, 2000.

The changes in the term of office and the nomination deadlines should not impose any additional costs on large or small firms in the Vidalia onion industry. The changes merely bring the term of office and the nomination deadlines into conformity with the recent change in the fiscal period which was changed to a calendar year basis (January 1–December 31) from September 16–September 15.

The Committee discussed the alternative of leaving the term of office and nomination deadlines as they were. However, the Committee believed that the term of office and nomination deadlines should continue to be based on the fiscal period, which now is established on a calendar year basis.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on December 27, 1999. Copies of the rule were mailed by the Committee's staff to all Committee members and Vidalia onion handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 30-day comment period which ended January 26, 2000. No comments were received.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 72267, December 27, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

Accordingly, the interim final rule amending 7 CFR part 955 which was published at 64 FR 72267, December 27, 1999, is adopted as a final rule without change.

Dated: March 6, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–5771 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG 37

List of Approved Spent Fuel Storage Casks: NAC–MPC Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add the NAC International Multi-Purpose Canister cask system to the list of approved spent fuel storage casks. This amendment allows the holders of power reactor operating licenses to store spent fuel in this approved cask system under a general license.

EFFECTIVE DATE: This final rule is effective on April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Merri Horn, telephone (301) 415–8126, e-mail mlh1@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear reactor power sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the

maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule in 10 CFR Part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

This rule will add the NAC International Multi-Purpose Canister cask system to the list of NRC-approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of Subpart L, NAC International (NAC) submitted an application for NRC approval with the Safety Analysis Report (SAR) entitled ''Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC–MPC).'' The NRC evaluated the NAC submittal and issued a preliminary Safety Evaluation Report (SER) and a proposed Certificate of Compliance (CoC) for the NAC Multi-Purpose Canister (NAC–MPC) cask system. The NRC published a proposed rule in the **Federal Register** (64 FR 45918; August 23, 1999) to add the NAC–MPC cask system to the listing in 10 CFR 72.214. The comment period ended on November 8, 1999. Five comment letters were received on the proposed rule.

Based on NRC review and analysis of public comments, the NRC staff has modified, as appropriate, its proposed CoC and the Technical Specifications (TSs) for the NAC–MPC cask system. The NRC staff has also updated the CoC and removed the bases section from the TSs attached to the CoC to ensure consistency with NRC's format and content. The NRC staff has also modified its SER in response to some of the comments.

The title of the SAR has been revised to delete the revision number so that in the final rule the title of the SAR is ''Final Safety Analysis Report for the NAC Multi-Purpose Canister (NAC–MPC) System.'' This revision conforms the title to the requirements of new 10 CFR 72.248, recently approved by the Commission. The NRC staff has also modified the rule language by changing the word ''certification'' to ''certificate'' to clarify that it is the Certificate that expires.

The proposed CoC has been revised to clarify the requirements for making changes to the CoC by specifying that the CoC holder must submit an application for an amendment to the certificate if a change to the CoC, including its appendices, is desired. This revision conforms the change process to that specified in 10 CFR 72.48, as recently approved by the Commission. In addition, other minor, nontechnical changes have been made to the CoC 1025 to ensure consistency with NRC's new standard format and content for CoCs.

The NRC finds that the NAC–MPC cask system, as designed and when fabricated and used in accordance with the conditions specified in its CoC, meets the requirements of 10 CFR Part 72, Subpart L. Thus, use of the NAC–MPC cask system, as approved by the NRC, will provide adequate protection of public health and safety and the environment. With this final rule, the NRC is approving the use of the NAC–MPC cask system under the general license in 10 CFR Part 72, Subpart K, by holders of power reactor operating licenses under 10 CFR Part 50. Simultaneously, the NRC is issuing a final SER and CoC that will be effective on April 10, 2000. Single copies of the CoC and SER are available for public inspection and/or copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Summary of Public Comments on the Proposed Rule

The NRC received five comment letters on the proposed rule. The commenters included two utilities, a public interest group, and two letters from one member of the public. Copies of the public comments are available for review in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20003–1527.

Comments on the NAC–MPC Cask System

The comments and responses have been grouped into nine subject areas: general, radiation protection, accident analysis, welds, design, thermal, structural, technical specifications, and miscellaneous issues. Several of the commenters provided specific comments on the draft CoC, the NRC staff's preliminary SER, and the TSs. To the extent possible, all of the comments on a particular subject are grouped together. The listing of the NAC–MPC cask system within 10 CFR 72.214, ''List of approved spent fuel storage casks,'' has not been changed as a result of the public comments. A review of the comments and the NRC staff's responses follow:

A. General

Comment A.1: One commenter stated that each cask review should be site specific with an Environmental Impact Statement (EIS) and a public hearing. The commenter further stated that the NRC should not be certifying numerous generic cask designs because the waste system in the country lacks standardization and integration.

Response: These comments are beyond the scope of this rulemaking that is focused solely on whether to add a particular cask design, the NAC–MPC cask system, to the list of approved casks. Pursuant to the general license, each licensee must determine whether or not the reactor site parameters are encompassed by the cask design bases considered in the cask SAR and SER. Further, each general licensee must document this determination in accordance with 10 CFR 72.212. The rulemaking process, used by the NRC for generic cask approval, is the regulatory vehicle that provides opportunity for public input.

Comment A.2: One Commenter stated that tiering on past EISs for dry storage is invalid for modern dry cask storage.

Response: The NRC disagrees with the comment. The environmental assessment (EA) and finding of no significant impact (FONSI) prepared as required by 10 CFR Part 51 conform to National Environmental Policy Act (NEPA) procedural requirements. Tiering on past EISs and EAs is a standard process under NEPA. As stated in the Council on Environmental Quality's 40 Frequently Asked Questions, the tiering process makes each EIS/EA of greater use and meaning to the public as the plan or program develops without duplication of the analysis prepared for the previous impact statement.

Comment A.3: One commenter stated that the cask should be built and tested before use at reactors, including the loading and unloading procedures.

Response: The NRC disagrees with the comment. The NAC–MPC storage cask system design has been reviewed by the NRC. The basis of the safety review and findings are identified in the SER and CoC. Testing is normally required when the analytic methods have not been validated or assured to be appropriate and/or conservative. In place of testing, the NRC finds acceptable analytic

conclusions that are based on sound engineering methods and practices. The NRC staff has reviewed the analyses performed by NAC and found them acceptable.

Comment A.4: One commenter objected to the use of the term ''transportable'' in the SER, SAR and CoC and recommended that the term be removed because the certification is only for storage. In addition the cask cannot be considered a multipurpose cask until both storage and transportation are certified. The commenter further stated that the NRC should review a cask for storage and transport, and issue both certificates at the same time so any changes necessitated in the design can be accounted for in the initial approval. The commenter expressed concern that utilities may end up with loaded casks that cannot be transported.

Response: The NRC disagrees with the comment. The use of the term ''transportable'' in the SER, SAR, or CoC is descriptive of the intended functionality of the canister. The use of such terminology in a dry storage cask application or an NRC SER/CoC does not represent a certification under 10 CFR Part 71 for the transport of radioactive materials. Further, separate certifications are required for approval of a cask design (or individual components such as a canister) under the provisions of use for 10 CFR Parts 71 and 72. There is no regulatory requirement that the certification be simultaneous. The NRC staff's review schedule depends on applicant submittals and workload considerations. The NRC staff notes that the NRC, on March 25, 1999, approved the NAC–MPC's transportable storage canister and its contents for transport in the NAC–STC cask design (Docket No. 71–9235).

Comment A.5: One commenter stated that the only multi-purpose casks acceptable for the high level repository would be a design that the Office of Civilian Radioactive Waste Management develops and therefore, the cask should not be called a multi-purpose.

Response: The NRC disagrees with the comment. The name or model number given to the cask design is developed by the applicant. The CoC for the NAC–MPC is intended for the interim storage of spent fuel. In the case of the NAC–MPC, the same contents within the Transportable Storage Canister have been approved for transportation. The use of the NAC–MPC cask design for disposal at a high-level waste repository is beyond the scope of this rule. The U.S. Department of Energy (DOE) has not yet made final decisions regarding design or deployment for the cask design to be used in the high-level waste repository.

Comment A.6: One commenter asked TSC to be defined.

Response: TSC stands for Transportable Storage Canister.

Comment A.7: One commenter stated that taking the cask to the pad should not be referred to as transport.

Response: The term ''TRANSPORT OPERATIONS'' and its associated use is defined in the DEFINITIONS section of the TSs and refers to the on-site movement of a loaded Vertical Concrete Cask (VCC) to the pad. The term is used consistently throughout the TSs and is pertinent only to activities carried out in accordance with the 10 CFR Part 72 CoC. The term is not associated with the offsite transport of spent fuel in accordance with 10 CFR Part 71.

Comment A.8: One commenter stated that dates should be added to some of the references for which the date is missing.

Response: The NRC agrees with the comment. Dates have been added, as appropriate, to the list of references in the SER.

Comment A.9: One commenter asked if the lids, containments, and VCCs were interchangeable, the commenter felt that they should be interchangeable and built to specific criteria.

Response: The NRC agrees with the comment. The specifications to which the storage cask design components are built, including the canister, lids, and vertical concrete casks, are listed in the license drawings contained in Section 1.5 of the SAR. Because all of the components for each cask are built to the same specifications, they are considered interchangeable to that extent.

Comment A.10: One commenter objected to the use of the term ''Final'' in the title of the SAR because changes will be made. The commenter also objected to the use of ''or'' instead of ''and'' in Condition 2 of the CoC because the TSs are part of the CoC.

Response: The use of the term ''Final'' in the title of the SAR does not imply that changes can not be made. It is indicative that the NRC has approved the design and is consistent with the added regulatory requirement in 10 CFR 72.248 (effective February 1, 2000) to submit a ''Final'' SAR. The use of the term ''or'' in Condition 2 is appropriate because it is possible to change the CoC without necessitating a change to the technical specifications.

Comment A.11: One commenter stated that the TSs should be easy to understand (simple directions) and that there should be clear definite criteria.

Response: The NRC agrees that the TSs should be understandable to a knowledgeable user such as licensee staff and should contain clear, definite criteria. An NRC goal in the development of the NAC–MPC TSs was to make them easy to understand and to contain clear, definite criteria.

Comment A.12: One commenter asked what kind of communication devices are mandatory for workers and how the devices were checked (during movement of casks on the pads and in other high noise and low visibility activities) because the workers need to be in constant communication.

Response: Communication devices utilized during the performance of cask operations are beyond the scope of this rule that certifies the cask design. Effective communications are an aspect of site-specific operating procedures to be developed by the cask users.

Comment A.13: One commenter expressed concern that the copy of the SER they received was missing some pages. The commenter was concerned that the SER was not complete when the CoC was proposed for rulemaking.

Response: The SER and CoC were complete at the time of the proposed rulemaking. The copy in the PDR is complete. During the copying process of copies to be dispatched for comment, apparently some pages were skipped by the copy machine. Subsequently, a complete copy was provided to the commenter. The NRC apologizes for any inconvenience that was caused by the missing pages.

Comment A.14: One commenter stated that references from the 1970s should not be used for modern dry casks. Specifically, the commenter referred to a 1974 reference on tornadoes and a 1978 ALARA reference.

Response: The NRC disagrees with the comment. The references cited are considered appropriate for the approval of dry cask storage system designs and were also utilized in the recent development of the standard review plan for dry cask storage systems. The NRC staff is not aware of technical inaccuracies in these documents that would render their use inappropriate. The commenter did not identify any specific technical inaccuracies.

B. Radiation Protection

Comment B.1: One commenter questioned the use of a maximum value for contamination of the outside surface of the canister. The commenter felt that the contamination should be at a minimum to protect worker and public exposure. The commenter also questioned the use of a small accessible area of the canister as being

representative of other areas in checking for contamination and how the interior surface contamination of the transfer cask was verified.

Response: Technical Specification 3.2.2 specifies the maximum permissible levels of removable surface contamination on the exterior surface of the canister. These limits are taken from guidance in NRC IE Circular 81–07. Experience has shown that these limits are low enough to prevent the spread of contamination to clean areas and are consistent with accepted ALARA practices.

By circulating demineralized water through the annulus between the canister and transfer cask to keep the pool water out of this region during loading operations in the spent fuel pool, the chance of contaminating the canister is reduced. The highest levels of canister contamination are expected to be on the accessible surfaces exposed to spent fuel pool water. By ensuring that this area meets the Technical Specification limit for contamination, it is expected that the exterior surface of the canister will also meet the same limits. The cask user is also required to verify the interior surface of the transfer cask is not contaminated. The interior walls of the transfer cask are made of the same material as the canister and will be exposed to the same water environment as the canister during loading in the fuel pool. Therefore, if the transfer cask walls are not contaminated as determined by a survey after VCC loading, then the exterior walls of the canister should also be free of contamination.

Comment B.2: One commenter asked about the surface contamination levels of a transfer cask after frequent use. The commenter also asked where the transfer cask is stored when it is not in use.

Response: After each use of the transfer cask, the surface contamination levels must be verified to be less than or equal to the limit specified in Technical Specification 3.2.2. Additionally, in accordance with 10 CFR Part 20, the end-user of the cask is required to have a radiation protection program in place that is commensurate with the activities of the facility. This program is designed to ensure levels are maintained ALARA.

The question on where the transfer cask is stored when not in use is beyond the scope of this rule. The transfer cask must be handled and stored in accordance with the cask user's radiation program procedures.

Comment B.3: One commenter was concerned about the dose to a worker checking the top outlets or welding near the inlets and outlets or conducting other maintenance or surveillance activities (including for the casks in the future) and asked if there was gap streaming at the top end. The commenter further questioned where the dosimeters for workers were located (on the feet, shoulder height, etc) to make sure the readings were accurate. The commenter further stated that shielding must be confirmed in areas of high dose.

Response: The occupational doses from maintenance and surveillance from MPC casks loaded with design basis fuel is described in Chapter 10 of the SAR. The calculated occupational doses have been reviewed and have been found to be acceptable. Additionally, if the dose rates measured on the loaded concrete cask are equal to or less than the limits specified in Technical Specification 3.2.1, then there is adequate assurance that the shielding is in place.

The specifics on doses received by workers performing maintenance and surveillance will be managed under the cask user's radiation protection program required by 10 CFR Part 20. This program will include radiation surveys of the casks so maintenance workers will know where the areas of high radiation occur, instruction to workers on how long they can stay in the area of the casks to perform maintenance and surveillance, and instructions for proper dosimeter placement.

Comment B.4: One commenter questioned why a Kansas University Skyshine experiment was used as a benchmark and whether this had been rechecked by the NRC. The commenter further questioned why a skyshine input manual was considered proprietary.

Response: The NRC finds conclusions based on sound engineering methods and practices to be acceptable. The previous version of the code, Skyshine II, was sponsored by the NRC. The current version, Skyshine III, extended the program's capabilities and was sponsored by Los Alamos National Laboratories. The changes to NAC's PC version of the Skyshine code were benchmarked against the results of experiments conducted by Kansas State University (KSU). These benchmark computations have been published in technical journals, textbooks on radiation shielding, and in a Sandia National Laboratory report. The KSU Skyshine experiment results are accepted industry wide for the methodology and were conducted by experts in the field of radiation shielding. Therefore, the NRC finds the Skyshine code to be acceptable.

By a letter dated October 8, 1998, NAC requested that the skyshine manual and calculations be considered as proprietary under the provisions of 10 CFR 2.790. By a letter dated May 3, 1999, NRC informed NAC that their request to keep the skyshine manual and calculations proprietary was approved for the following reasons:

a. The information has been held in confidence and is the result of design calculations and computer code development performed by NAC. The information is customarily held in confidence by NAC based on the significant commercial investment expended in its development;

b. The information is not available in public sources, and NAC is transmitting it to the Nuclear Regulatory Commission (NRC) in confidence; and

c. The public disclosure of the information would cause substantial harm to the competitive position of NAC. Competitors seeking to develop similar computer code information and calculations would have to expend similar amounts of time, engineering labor, and money in its development.

Comment B.5: One Commenter stated that the dose consequences from a failure of all fuel rods with a subsequent canister breach, including the source term, should be evaluated because the canister can not be assured to be leaktight.

Response: The NRC disagrees with the comment. Interim Staff Guidance (ISG) No. 3, ''Post Accident Recovery and Compliance with 10 CFR 72.122(l)'', specifies that only credible accidents, and the associated consequences, be evaluated against the requirements of 10 CFR Part 72. The hypothetical accident of a ground level breach, with 100% fuel rod failure, is considered to be a non-mechanistic, non-credible accident. Therefore, the applicant is not required to analyze the consequence of this type of accident. As indicated in SAR Section 7.1, the confinement boundary is completely welded and inspected in accordance with both the ASME Code and ISG No. 4, ''Cask Closure Weld Inspections,'' and is leak tested to American National Standards Institute leaktight standards. Further, the analyses presented in the SAR demonstrated that the stresses, temperatures, and pressures of the TSC are within the design basis limits under the accident conditions identified by the applicant and that the confinement boundary of the TSC remains intact from all credible accidents. The NRC concurs with the evaluation in the SAR and believes that the design of the confinement boundary, which includes the inspection of welds, is adequately rigorous and meets the applicable regulations.

Comment B.6: One commenter questioned how the effluent from flushing the radioactive gases with nitrogen would be managed, how it would impact workers and the public from ALARA considerations, and how time factored in for the release.

Response: The canister to be unloaded will be flushed with nitrogen gas to remove any accumulated radioactive gases prior to initiating fuel cooldown. The amount of radioactive gases displaced by the nitrogen gas is first assessed by sampling to determine the appropriate radiological controls. Any gaseous effluent released from the cask would be processed through HEPA filters and any additional filtration systems a facility may have in order to filter the air from a fuel handling building or reactor building. All effluents released from this building system would have to be in compliance with the 10 CFR Part 50 license.

C. Accident Analysis

Comment C.1: One commenter questioned the adequacy of administrative controls to exclude explosions (such as a truck bomb) in the vicinity of an Independent Spent Fuel Storage Installation (ISFSI). The commenter recommended that the evaluation of a sabotage event for an ISFSI be updated.

Response: These comments are outside the scope of this rulemaking. Spent fuel in the ISFSI is required to be protected against radiological sabotage under the provisions of 10 CFR 72.212(b)(5). Each utility licensed to have an ISFSI at its reactor site is required to develop physical protection plans and install a physical protection system that provides high assurance against unauthorized activities that could constitute an unreasonable risk to the public health and safety. The physical protection systems at an ISFSI and its associated reactor are similar in design to ensure the detection and assessment of unauthorized activities. Response to intrusion alarms is required. Each ISFSI is periodically inspected by NRC. Also, the licensee conducts periodic patrols and surveillances to ensure that security systems are operating within their design limits. The NRC believes that the inherent nature of the spent fuel storage cask also provides significant protection against malevolent acts.

Comment C.2: One commenter recommended that a multi-missile (natural or man-made) scenario be considered in the accident analysis.

Response: The NRC disagrees with the comment. The NRC staff, in Section 3.4.2 of the SER, agreed with the SAR conclusion that the design basis tornado-driven missiles are not capable of overturning the cask or penetrating the VCC. Multiple tornado-driven high-energy or penetrating missiles impinging simultaneously at the same cask location is beyond the design bases and is not considered to be credible.

NRC regulations in 10 CFR Part 72 establish physical protection requirements for an ISFSI located within the owner-controlled area of a licensed power reactor site. Spent fuel in the ISFSI is required to be protected against radiological sabotage using provisions and requirements as specified in 10 CFR 72.212(b)(5). Further, specific performance criteria are specified in 10 CFR Part 73. Each utility licensed to have an ISFSI at its reactor site is required to develop physical protection plans and install systems that provide high assurance against unauthorized activities that could constitute an unreasonable risk to the public health and safety.

Comment C.3: One commenter questioned the bounding fire analysis (8 minute, 638°F fire) and recommended that a fire initiated from an airplane crash or a different type of vehicle be used. The commenter further questioned the location of the fire at the base because flaming debris could land on top of the cask. The commenter also questioned whether lightning was considered to start a fire.

Response: The basis for the 8-minute fire is associated with the time it would take to burn 50 gallons of fuel, presumably carried by the transporter. Other modes of transport causing the fire (such as airplanes, trains, delivery trucks) are not considered plausible. However, before using the NAC–MPC cask, the general licensee must evaluate the site to determine whether or not the chosen site parameters are enveloped by the design bases of the approved cask as required by 10 CFR 72.212(b)(3). Included in this evaluation is the verification that the cask handling equipment used to move the VCC to the pad is limited to 50 gallons of fuel (as detailed in Technical Specification 4.4.5-Site Specific Parameters and Analyses). The fire is assumed to burn at 1475°F and is assumed to be at ground level since that produces the worse case scenario of fire/heated air entering the inlet vents of the VCC and coming into direct contact with the outside of the canister. Exposure of the VCC to fire of this duration would have little effect on the canister or its contents. Lightning causing a fire in the vicinity of the VCC is not considered plausible because of the absence of combustible material.

Comment C.4: One commenter questioned why a seismic event or a landside that buries a cask is not considered credible.

Response: Burying a cask due to seismic event, landside, or tornado is considered a very unlikely event. Considering the unlikeliness of the event and the capability of cask components and contents to be within their thermal limits after blockage of the air passages for 45 hours, adverse consequences from cask burial are not considered to be credible. For example, casks are designed to withstand tipover loadings, yet tipover is designed not to happen for a certain size earthquake. Further, casks are analyzed to be within their thermal limits for up to 45 hours that would allow ample time for restoring the cask's cooling system to an operable status.

Comment C.5: One commenter questioned whether the pad had been evaluated for an earthquake because the pad could crack and cause the cask to tipover. The commenter further questioned what happens to the pad footer and steel reinforcement during an earthquake.

Response: The storage pad, which is beyond the scope of this cask design rulemaking, has not been evaluated for natural phenomena, including earthquakes. In accordance with 10 CFR 72.212, the cask operators are required to perform written evaluations to ensure that storage pads have been designed to adequately support the stored casks. The earthquake motions defined for the top surface of the pad are the site parameters for which the SAR has satisfactorily demonstrated that the cask will not overturn or slide.

Comment C.6: One commenter questioned what happens to the berm or wall used as a shield during a tornado, hurricane, or earthquake and questioned the composition of the berm.

Response: The use and composition of berms or walls are beyond the scope of this rulemaking for the cask design. If an engineered feature is needed to satisfy the requirements of 10 CFR 72.104(a), then these features are to be considered important to safety and must be evaluated to determine applicable quality assessment category on a site specific basis as required by Section 4.4.7 of the TSs. The cask design does not rely on engineered features to meet the Section 72.106 post-accident dose rate requirement.

Comment C.7: One commenter questioned what would happen if a seismic event occurred while the transfer cask was attached to the top of the concrete shield.

Response: This is not a design basis event for approval of the cask design's capability to safely store spent fuel. Section 72.212(b)(4) requires the general licensee to determine whether activities related to the storage of spent fuel involve any unreviewed safety question or change in the facility TSs, as provided under 10 CFR 50.59.

Comment C.8: One commenter questioned if the drop test considered the condition of materials at the end of cask life.

Response: As noted in SAR Section 11.2.11 and SER Section 3.3.9, the 6-inch end drop will exert a maximum axial deceleration of less than 20 g to the TSC components and the spent fuel assemblies. This g-load is much smaller than the design basis impact load of 56.1 g for which the cask system structural integrity has satisfactorily been demonstrated. Because the margin of safety is large and the material's strength is not expected to degrade, the NRC believes that the cask system will remain capable of withstanding a 6-inch cask drop accident throughout the 20 year storage period.

Comment C.9: One commenter asked a number of questions related to the Boral panels concerning whether the Boral poison remains in place under accident conditions, including cask tipover; the necessity of the Boral panels; how the Boral is manufactured and tested; the content of the Boral; the continued efficiency over time; and whether the panels can structurally deform.

Response: The Boral panels are necessary for ensuring that the NAC-MPC system meets 10 CFR Part 72 requirements for criticality safety. Each Boral poison panel is held in place by a stainless steel cover plate that is welded around its perimeter to the outer wall of the fuel tube. The applicant has shown that impact loads greater than those expected in storage accidents, including a postulated cask tipover, produce maximum stresses in the seal weld that are a small fraction of the weld material's ultimate strength. The NRC staff has found no credible mechanisms for deforming the poison panels in a way that would lead to loss or reduced effectiveness of the panels. Warping of the panels in relation to the tube walls to which they are attached is prevented by the welded stainless steel cover plates.

Boral will be manufactured and tested under the control and surveillance of a quality assurance and quality control program that conforms to the requirements of 10 CFR Part 72, Subpart G. A statistical sample of each manufactured lot of Boral is tested by the manufacturer using wet chemistry procedures and/or neutron attenuation techniques. The specified minimum content of the neutron poison in the Boral panels (*i.e.*, 0.01 grams of ^{10}B per cm^2) is ensured by the acceptance testing procedures described in SAR Section 9.1.6.

Boral has been used in the nuclear industry since the 1950's and used in baskets since the 1960's. Several utilities have also used Boral in spent fuel storage racks. Industry experience has revealed no credible mechanisms for a loss of Boral efficacy in the cask.

Comment C.10: One commenter asked how important the minimum flux trap width is to criticality safety and whether it can be altered in an accident.

Response: The minimum flux trap width is an important design parameter in limiting the system's maximum neutron multiplication factor (k_{eff}) under normal and accident conditions. Bounding structural analysis performed by the applicant indicate that flux trap widths may be slightly reduced as a result of side-impact loads from a postulated cask tipover accident. The NRC staff has analyzed the reactivity effects from hypothetical flux trap deformations well beyond those expected from tipover accidents and concludes that the resulting increases in k_{eff} are minuscule in relation to the large overestimates of k_{eff} arising from the conservatisms used in the applicant's criticality calculations. These conservatisms include modeling the spent fuel as though it were fresh, assuming flooding of the cask interior with unborated water, crediting only 75 percent of the minimum neutron poison content of Boral panels, assuming all major dimensions and parameters of the basket components and fuel contents are at their most reactive tolerances limits, and assuming the most reactive lateral shifting of all basket components and contents.

Comment C.11: One commenter questioned why lateral shifting of tubes in disk holes was not a concern and stated that it should not be allowed because you can not be sure what happens in all cases.

Response: Lateral shifting of the fuel tubes within their disk holes is not a concern because the criticality analysis presented in SAR Section 6.4.3.2 has adequately accounted for tube shifting variations in identifying and analyzing the most reactive configurations of the basket and contents.

Comment C.12: One commenter asked for clarification on what is meant by pure water, whether this meant unborated water. The commenter further questioned whether uneven flooding was a concern and if the analysis had been checked.

Response: Pure water is unborated water. Uneven flooding is not a concern because the basket components are designed to allow the free flow of water between the interior and exterior of the fuel tubes. Prevention of uneven flooding within and outside the fuel tubes ensures that the flux traps function as analyzed in limiting the maximum k_{eff} of the system. The NRC staff has checked and confirmed the applicant's analysis and conclusions regarding the design's ability to prevent uneven flooding of the basket.

D. Design

Comment D.1: One commenter recommended that canister identification be added on the top of the structural lid per the requirements of 10 CFR 72.236(k).

Response: The NRC agrees with the comment. SAR Drawings 455–871 and –872 have been revised to show that the structural lid of the transportable storage canister is steel stamped with its model number, unique identification number, and empty weight.

Comment D.2: One commenter recommended that the number of hose connections be increased to 8 around the transfer cask near the bottom to improve the forced air cooling capability.

Response: The NRC agrees with the comment. Although the original design with two hose connections remains acceptable, increasing the number of hose connections to eight will more evenly distribute the cooling service air supply around the bottom of the transfer cask. The changes have been made to the SAR.

Comment D.3: One commenter recommended that an alternative slip-on flange detail be permitted at the top of the fuel tube versus the butt welded flange detail indicated on the drawing. The commenter further stated that the flange should be attached with continuous full fillet on interior of fuel tube with intermittent weld on exterior.

Response: The NRC agrees with the comment, as the alternative detail provides the same integrity as the original butt weld design. SAR Drawing 455–881 has been revised to show that the flange at the top of the fuel tube is attached to the tube using a continuous fillet weld on the interior of the tube.

Comment D.4: One commenter stated that the venting of hydrogen should not be allowed because of the associated fire or explosion hazard. The commenter further stated that the design should not be certified if hydrogen is generated.

Response: The NRC disagrees with the comment. As noted in SAR Section 3.4.1.2.2, the applicant anticipates that no hydrogen gas is expected to be detected before, or during, the loading or unloading operations. However, in the event that a reaction between the aluminum heat transfer disks and the spent fuel pool water occurs, the loading and unloading procedures of SAR Chapter 8, which include procedures to detect and remove hydrogen from the space between the shield lid and the top of the water during any welding or cutting operations, provide adequate assurance that the welders will be protected. Further, the NRC has licensed other storage casks that utilize aluminum heat transfer components, including 10 TN–32 casks and 2 NAC-I28 casks. Loading of these casks has not resulted in unsafe conditions for the workers.

Comment D.5: One commenter objected to allowing the storage of Reconfigured Fuel Assemblies (RFA) in the same cask as intact fuel assemblies and believed there should be separate analysis and certificates. The commenter questioned whether the RFAs would remain in position during handling, storage, and possible unloading, or if they would float in a reflood and if the tubes would remain leaktight. The commenter asked about the composition of an RFA. The commenter asked how much the ''debris'' weighs, how dryness is assured, and how the utility can ensure that the cask is not overloaded and that the weight is properly distributed.

Response: The NRC disagrees with the comment. The individual RFA tubes are positioned in a stainless steel container with perforated top and bottom end plates that retain the tubes for all conditions. The individual tubes have plugs at each end to retain their contents. The plugs are trapped in place by the top and bottom end plates. A loaded RFA weighs about 550 pounds and will remain in position for all conditions. Neither the container nor the individual tubes are closed, so they will drain as a canister is emptied and will refill (if canister reflooding is ever necessary) as the canister is filled. Thus, an RFA will not float. Additional description of the RFAs can be found in SAR Section 2.1.2.

No actual weighing of the contents will be done. A conservative maximum weight of contents is analyzed in each fuel assembly location in the basket for each authorized loading configuration. The weight of an actual fuel assembly is always less than that analyzed. The debris that is contained in an RFA cannot exceed the weight of one fuel rod in each of the 64 stainless steel tubes. Because PWR fuel assemblies contain 179 (14x14 assembly) fuel rods or more, the weight of the RFA with only 64 fuel rods is much less than the conservative weight of contents that is analyzed.

The intact or damaged spent fuel rods and fuel debris are loaded into the individual RFA tubes under water. Each tube has a drain hole in each end. There is a perforated plate on the top and bottom ends of the RFA container to permit drainage but retain gross particles and pieces of debris. Thus, as the transportable storage canister is drained, the RFA tubes and container are drained as well. The double vacuum drying cycle specified in the TSs and described in the canister loading procedures ensures the removal of any residual water for the canister and from the RFA.

The slight variation in load distribution due to one or more RFAs has been considered and is bounded for all loading evaluations. Consideration of a fully loaded configuration bounds any reduced loading configuration. The potential for slight unevenness in loading does not affect canister handling because the 3-point lifting arrangement maintains the canister vertical for all lifts.

Comment D.6: One commenter recommended calling the inlet a drain or flow tube to avoid worker confusion.

Response: The NRC disagrees with the comment. The components are labeled to reflect their intended function for loading operations and are shown as such on the drawings. For wet unloading operations, the components are properly called out in the SAR procedures with respect to the drawings. The NRC considers it appropriate to label components to reflect their intended routine function under normal operations.

Comment D.7: One commenter stated that the cask label should clearly identify the contents of the cask, indicating if the cask contains damaged fuel and the type of cladding and that the label should be stainless steel so it won't rust.

Response: The NRC disagrees with the comment. Each stainless steel canister structural lid is stamped to identify the model number, unique identification number, and empty weight. Additionally, each vertical concrete cask has a stainless steel nameplate attached that identifies the model number, unique identification number and empty weight. These markings meet the requirements of 10 CFR 72.236(k). Space is provided in both instances for the addition of cask user specified information; however, the specific identification of cask contents is not required for the permanent markings affixed to the cask. The NRC notes that § 72.212(b)(8) requires each general licensee to accurately maintain a record for each cask that lists the spent fuel stored in the cask. This record must be maintained by the cask user until decommissioning of the cask is complete.

Comment D.8: One commenter questioned why only Yankee class fuel could be stored in the cask. The commenter further questioned whether burnable poison rod assemblies and TPAs would eventually be stored in the cask and if so, stated that the evaluation should be completed before the CoC is issued.

Response: Each cask approval is specific and limited to the contents requested by the applicant, that in this case, is for spent fuels designated as ''Yankee Class'' within the application. Future changes to the authorized contents, if any, including different spent fuel assemblies and other radioactive materials associated with fuel assemblies, must be requested and approved in accordance with the regulations of 10 CFR Part 72.

Comment D.9: One commenter stated that the documents should make it clear that no control components should be used in an RFA and that any empty position needs a dummy rod.

Response: The NRC agrees with the comment and notes that the Fuel Assembly Limits (Table 2–1 of the TS) specify that intact fuel assemblies and RFAs shall not contain control components, and that any missing fuel rods in an intact fuel assembly shall be replaced with a dummy rod.

Comment D.10: One commenter asked how the lifting slings were attached and if they had ever been tested. The commenter indicated that a dry run should be performed.

Response: SAR Section 1.2.1.4.8 describes the use of the load rated rigging attachments and slings. All slings are designed to have adequate safety margin to meet the requirements of ANSI N14.6 and NUREG–0612 for lifting heavy loads. The administrative controls of the TS require the cask user to perform dry runs of certain evolutions prior to initial loading. These controls specify that the dry runs will include the heavy load activities of moving the concrete cask, moving the transfer cask, and lowering the canister into the concrete cask.

Comment D.11: One commenter asked how the transfer cask is attached to the concrete cylinder, how high up in the air is the transfer cask, and what is

located in the vicinity that the cask could fall on.

Response: As depicted in SAR Figure 1.1–1 and described in SAR Section 8.1.2, after the transfer adapter plate is bolted to the concrete cask top, the transfer cask, with the TSC in place, is brought to rest on the transfer adapter by aligning the transfer cask bottom door rails and connector tees with the adapter plate rails and door connectors. In this configuration, the bottom of the transfer cask is about 160 inches above the bed of a heavy-haul trailer on which the concrete cask is rested. The evaluation of a transfer cask drop is governed by NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants,'' that is subject to site-specific evaluations and is beyond the scope of this rulemaking.

Comment D.12: One commenter stated that the mockup needs to clearly work for opening and unloading demonstration evaluations.

Response: The NRC agrees with the comment. The administrative controls incorporated in the TSs require that a mockup, if used in place of an actual canister for dry runs, shall demonstrate the activities necessary to open and unload a canister.

Comment D.13: One commenter asked whether structural lids meant the structural and shield lids. The commenter asked several questions about the shield plug concerning whether the NS–4–FR serves the same function as the RX–277 in the VSC–24, if the NS–4–FR was encased in the carbon steel, why carbon steel is used instead of stainless steel (concern over rusting), where the shield plug is located, and if the carbon steel is coated.

Response: The transportable storage canister has a 3-inch shield lid and a 5-inch structural lid. After the loaded canister is placed in the concrete cask, a shield plug is installed over the canister. The shield plug is comprised of 1 inch of NS–4–FR and 4.125 inches of carbon steel. The NS–4–FR is encased in carbon steel. Then, a 1.5-inch thick carbon steel lid is used to seal the concrete cask. The carbon steel is coated with either Keeler and Long E-series epoxy enamel or Ameron PSX738 Siloxane. Therefore, rusting is not a concern. As noted in SER Section 5.1.2, NS–4–FR is a solid borated polymer used for neutron shielding. The RX–277 in the VSC–24 cask design is used as a neutron shielding material in the top plug assembly. The cask designer determines the materials to be used for the cask.

Comment D.14: One commenter stated that ignoring full shielding on the bottom of the cask was a mistake and that the bottom plate needed to be evaluated for better shielding.

Response: The NRC disagrees with the comment. Full shielding on the bottom of the cask is not necessary to provide adequate protection for the public. The calculated occupational doses have been reviewed and have been found to be acceptable. See also the response to B.3.

E. Welds

Comment E.1: One commenter asked how much water is to be drained before welding and stated that the water level should be set as a criteria.

Response: In SAR Chapter 8, Operating Procedures, the cask end user is directed to drain approximately 50 gallons of water from the canister.

Comment E.2: One commenter asked how various welds are checked and tested, and if they were leak tight (could water seep in adding weight). The commenter indicated that the welding procedures were very important.

Response: The examination and testing of welds is described in SAR Sections 9.1.1, 9.1.2 and 9.1.3. Leakage of the confinement boundary is not anticipated because all shop welds are volumetrically and surface examined in accordance with the governing ASME Code's requirements. Field welds (*i.e.* shield lid, structural lid and port cover plates) of the confinement boundary are liquid penetrant examined. In addition, the field weld on the shield lid is leak tested to ensure that it is leaktight. These examinations ensure that the welds will not leak.

Comment E.3: One commenter stated that there should not be any exceptions on the maximum flaw size for a weld that is allowed, the criteria should be clear (including temperature limits). The commenter questioned why the postulated cracks under each liquid penetrant (PT)-examined surface were not required to be additive for comparison to the critical flaw size.

Response: The NRC accepts examination of the cask closure welds in accordance with Interim Staff Guidance-4, Revision 1 that allows the use of a multi-layer (*i.e.* progressive) PT examination in lieu of a volumetric examination. As stated in the ISG, the critical flaw size is determined in accordance with ASME Section XI methodology and is used to determine the spacing between successive PT examination layers. There is enough experience with the progressive PT method to conclude with reasonable assurance that it will detect flaws that are open to the surface and are of a size that would affect the serviceability of the weld. The probability of a flaw of this size not being detected because it did not break the surface is not very high because the liquid penetrant test is undertaken at intermediate weld pass levels. Thus, the concept of adding up theoretical undetected flaw sizes under each PT layer in a way that the sum could be greater than the determined critical flaw size is not considered plausible by the NRC. For the NAC–MPC canister, which is composed of ductile stainless steel, no restriction has been placed on its movement based on permissible flaw sizes.

Comment E.4: One commenter asked about concerns with corner welds of tubes and if they could bend at the corners.

Response: The square fuel tube is fabricated with a full-length longitudinal weld along the center line of one of the four sides of the tube. Weld examination and testing are described in SAR Sections 9.1.1.1 and 9.1.1.2. There are no tube corner welds and, therefore, no concerns with bending the fuel tube at its corners, as suggested.

Comment E.5: One commenter asked what is meant by galling of a weld.

Response: Galling is excessive wear in the region of contact between load bearing surfaces, *i.e.* bolt threads during torquing, or trunnions on a component like a *transport* cask where the lifting device rotates in contact with the trunnions. For the vertical load test of the transfer cask, the loading fixture should not rotate with respect to the trunnions, and thus, galling of the trunnions is not expected to occur. The trunnion welds are inspected for permanent deformation or cracking, and the trunnion load bearing surfaces are inspected for permanent deformation and galling.

Comment E.6: One commenter questioned whether both the structural and shield lids were ultrasonic tested (UT) because the SER claimed the lids provided redundant sealing and the commenter didn't think the claim should be made if they were not both UT tested. The commenter questioned what a progressive penetrant test was and why it could be used instead of the UT. The commenter further stated that the progressive penetrant test should not be allowed for the confinement boundary welds if it was not in agreement with ASME Section III, Class I requirements.

Response: As stated in SAR Section 9.1.1.1 ''Nondestructive Weld Examination,'' the shield lid has a root and final pass liquid penetrant (PT) examination and the structural lid could have either ultrasonic examination or a progressive PT examination. For the shield lid weld, the liquid penetrant examinations of the root and final

surface, the pneumatic pressure test, and the subsequent liquid penetrant re-examination have been accepted by the NRC staff as adequate for demonstrating the weld integrity.

The basis for the structural lid weld examination methods is documented in the NRC's Interim Staff Guidance-4, Revision 1 that allows the use of a multi-layer (*i.e.*, progressive) PT examination in lieu of a volumetric examination. Because the shield lid and structural lid are both welded and examined, this constitutes compliance with the redundant sealing requirement of 10 CFR 72.236(e).

Comment E.7: One commenter stated that a helium leak test of the shield lid was inadequate to provide seal reliability and that a UT should be completed.

Response: The NRC disagrees with the comment. For the type of welding process, the environmental conditions near the weld, and the stainless steel weld base material, there are no known delayed cracking mechanisms that could cause the weld to crack after it has been inspected. Therefore, the liquid penetrant examinations of the root and final surface, the pneumatic pressure test and subsequent liquid penetrant examination, and the helium leak test conducted in accordance with the leak-tight criteria of ANSI N14.5 have been accepted by the NRC staff as meeting the requirements of 10 CFR 72.236(e) for redundant sealing of the confinement boundary.

Comment E.8: One commenter stated that time frame for calibrating UT equipment was very important.

Response: NRC agrees with the comment in that calibration of any equipment used in applications affecting quality needs to be assured. In addition, 10 CFR 72.164 ''Control of Measuring and Test Equipment'' and 10 CFR 50, Appendix B, XII, ''Control of Measuring and Test Equipment'' provide the regulatory foundation of a licensee's quality assurance program to ensure that these calibrations take place.

Comment E.9: One commenter stated that the results of a PT examination need to be permanent and that criteria should be established for permanent records. The commenter requested information on what is required to keep records permanent.

Response: 10 CFR Part 72, Subpart G, requires that records pertaining to the design, fabrication, erection, testing, maintenance, and use of systems, structures, and components important to safety shall be maintained until decommissioning of the cask is complete. This includes cask closure welds which are important to safety. Criteria for records is given in Subpart G.

Comment E.10: One commenter questioned what was meant by ''sufficient'' and indicated that there should be specific criteria for acceptability of a PT exam because ''sufficient'' is not an acceptable criteria. The commenter also questioned what was meant by in the field in the performance of welding.

Response: The NRC accepts PT examination of field welds (meaning those that are *not* made in the fabricators shop but are made at the location where the spent fuel is being loaded) for the root and final weld passes. For the port covers the welds are relatively small (*i.e.* ¼ inch) fillet welds that do not lend themselves to volumetric examination techniques nor progressive PT examinations, and the welds are not subject to any significant loadings which means they basically perform a sealing function. Therefore, the NRC believes that PT examination of the port cover plate root and final welds is adequate. Additionally, the closure weld of the structural lid will be either progressively PT examined or UT'd at the option of the licensee. The acceptability of the progressive PT examination is documented in NRC's Interim Staff Guidance-4, Revision 1. The term ''sufficient'' was used in reference to the actual number of intermediate layers of PT examinations necessary to detect critical flaws. For the NAC–MPC ''sufficient intermediate layers'' means that in addition to the root and final weld passes, each successive ⅜ inch weld thickness will also be PT examined as shown on SAR Drawing 455–872.

Comment E.11: One commenter questioned why the backing ring is not considered in analysis and how the ring affected the timing, equipment, and worker dose for the unloading procedures in cutting the cask.

Response: The backing ring is utilized to aid in the welding process. During the welding operation, it effectively reduces fit up time and welding time without compromising weld integrity. The NRC does not believe that the inclusion of backing rings would impose any additional worker exposure during an unlikely unloading operation and when weighed against dose saved during welding, results in an overall reduction in dose compared to not using a backing ring.

Comment E.12: One commenter questioned how structural and shield lid welds were cut open, what equipment was used, whether shims were used, and how the shims were removed (commenter did not think that shims should be used). The commenter also asked how falling debris is avoided.

Response: The NAC–MPC design does not use shims for positioning the shield lid or structural lid on the canister. The operating procedures for removal of the structural lid, the vent and drain port covers, and the shield lid are included in Section 8.3 of the NAC–MPC SAR. Detailed site-specific procedures for these activities will be developed by the cask user. The adequacy of these specific procedures will be evaluated by the licensee.

F. Structural Evaluation

Comment F.1: One commenter recommended that the certification for the NAC–MPC canister system be withheld because NAC has not considered information that questions the structural integrity of the NAC cask system to withstand a 30-foot drop test. The information is contained in Singh, K.P. and Max DeLong, ''A Structural Assessment of Candidate Fuel Basket Designs for Storage and Transport of Spent Nuclear Fuel'' (Presented at the INMM Conference, Washington, D.C., January 14–16, 1998).

Response: The NRC disagrees with the comment. The cask-drop test requirements are for transport consideration that is beyond the scope of this rulemaking. Certification of the NAC–MPC for listing under 10 CFR 72.214 can only be used by the general licensee to store, not transport, spent fuel. However, the cask, including the fuel tube has been evaluated for a side impact load of 55 g, that bounds the side impact load associated with a cask tipover accident. The evaluation has satisfactorily demonstrated structural integrity of the system for its storage configuration. There is no basis for withholding the certification for the NAC–MPC storage canister system as suggested.

Comment F.2: The same commenter objected to the NRC staff's discussion, in an NRC letter dated August 25, 1999, to D. Lochbaum regarding the Singh and DeLong paper, which the commenter interpreted as ''crediting'' NAC's design as conservative by considering the structural properties of portions of the internal basket system and other items. In the commenter's view, allowing design ''credit'' for portions of the overall structure not intended to provide gross structural support undermines the entire cask drop requirement. The commenter believed that the NAC–MPC system should not be certified if it does not have adequate external structure to withstand the drop test and protect the irradiated fuel bundles within the cask.

Response: Although the 30-foot drop test is not an explicit Part 72 requirement, the applicant referenced, in part, the NAC–STC transportation cask 30-foot analysis. Sections 2.7.8 and 2.7.9 of the SAR for the NAC–STC transportation cask, Docket 71–9235, evaluate structural integrity of the fuel tube under a side impact load of 55 g. The analysis considers the approach and information consistent with those discussed in the paper by Singh and DeLong. With no credit given to the basket structural properties other than the fuel tube and its interaction with the support disks, the analysis has demonstrated that the fuel tube is capable of withstanding a cask-drop test, thus, protecting the irradiated fuel bundles within. Because the load also bounds the side impact load associated with the cask tipover accident, the fuel tube is demonstrated to be capable of maintaining its structural integrity in a cask tipover accident. Moreover, the NRC staff notes that in a November 2, 1999, letter to Mr. Block to offer his comment on NRC's August 25, 1999, communication to Mr. Lochbaum, Dr. K.P. Singh, the senior author of the paper, indicated that he had neither reviewed NAC's design documents nor been in a position to comment on the nuances of NAC's design.

Comment F.3: One commenter asked about the structural soundness of the inlet parts as it relates to withstanding the stress and pressure from the lifting jack use, and whether the inlets could be damaged or deformed by using the jack.

Response: The structural design and analysis of the air cooling inlets when serving as bearing surfaces for lifting the storage cask are described in SAR Section 3.4.3.1. The stress analysis results show that the air inlets are structurally capable of withstanding all forces associated with the cask lifting operation and could not be damaged or deformed by using the jack. SAR Section 8.1.3 describes a procedure for operating the air pads and lifting jacks to transport the concrete cask. The jacks are installed at the bottom of the air inlet without the inlet screens in place. Any effects resulting from use of the air pads or lifting jacks is readily visible for inspection.

Comment F.4: One commenter inquired about a Nelson stud anchor and the TSC support pedestal. The commenter asked if the pedestal took the place of the tiles used in the VSC–24 cask, why the pedestal used 2 inches of carbon steel instead of ceramic or stainless steel because of a concern over rusting, how the pedestal is attached to the VCC bottom plate, how high is the pedestal, and if the pedestal could shift or deform during handling. The commenter further asked if the force had been calculated for possible adherence of the metal surfaces after rusting.

Response: The term ''Nelson stud'' is a trade name for headed steel studs used for developing anchoring action between reinforced concrete and its steel liner plate. SAR Drawing 455–861 provides design details on how Nelson studs are welded to the cask bottom plate and the air inlet top so that the bottom plate and the concrete wall will act as an integral part to achieve its structural support function. As depicted in the same SAR drawing, the 23-inch high pedestal is a carbon steel weldment that consists of two major structural part, a 2-inch thick horizontal circular pedestal plate for providing direct bearing surface to the TSC and a connecting vertical ring plate assembly as a load path to transmit the TSC inertia load to the cask bottom and storage pad. If carbon steel is exposed to moist air, it may corrode. Detail B–B of SAR Drawing 455–862 shows that a ¼-inch thick stainless steel plate is installed between the TSC bottom and the pedestal plate, in addition to an ⅛-inch thick BISCO insulation. This cover is installed on a sheet of fire block insulation that isolates the TSC from the VCC carbon steel base plate. This construction will prevent the pedestal plate from rusting to the canister bottom. Therefore, no adherence force will develop to cause any shifting, deforming, or cracking of the pedestal plate in handling, as suggested.

Comment F.5: One commenter asked if there would be any deformation of the fuel tubes in a tipover or drop. The commenter further asked how the tubes and disks respond to each other when stressed and how they affect each other.

Response: The support disk cutouts and the fuel tubes are sized to avoid binding when the cask is kept in its upright position. In a cask tipover accident, the support disk ligaments are in contact with fuel tubes and will provide support to fuel assembly inertia loads. Sections 2.7.8 and 2.7.9 of the safety analysis report for the NAC–STC transportation cask, Docket 71–9235, analyzes stresses and strains of the fuel tubes for cask side-drop tests. SAR Section 11.2.12.3.3 evaluates structural performance of the support disks for bounding impact loads. As concluded in SER Section 3.3.8, both the fuel tubes and support disks have been shown to behave satisfactorily for a cask tipover accident.

Comment F.6: One commenter asked about the energy balance method used for estimating impact loads and whether it considered elastic-plastic deformation.

Response: The energy balance method, as used in SAR Section 11.2.11, assumes that the potential energy associated with a 6-inch vertical drop of the TSC is dissipated by plastic deformation of the steel support pedestal. By considering the maximum force associated with the crushed area of and the corresponding flow stress in the pedestal support ring assembly, the method provides a conservative estimate of a height reduction of the air inlet region by 0.35 inches that has been evaluated to be acceptable.

Comment F.7: One commenter questioned why the NRC did not consider a cask tipover off the air pad in movement or from a transporter tipover. The commenter asked what kind of deformation (from a tipover) is acceptable. The commenter further asked if the cask could roll after it is tipped over and what would happen if it rolled into a ditch. The commenter indicated that the transport path should be evaluated (potholes, snow, ice, gravel, *etc.*).

Response: The tipover and bottom end drop analyses form part of the structural design basis for the NAC–MPC system design. NAC described the VCC drop and tipover analyses in SAR Sections 11.2.11 and 11.2.12. The NRC's evaluation of the vendor's analyses is described in the corresponding SER Sections 3.3, 11.2.11 and 11.2.12. The NRC found the results of these analyses to be satisfactory in that the calculated stresses were within the design requirements. Before using the NAC–MPC system, the general licensee must evaluate the foundation materials to ensure that the site characteristics are encompassed by the design bases of the approved cask. The events listed in the comment are among the site-specific considerations that must be evaluated by the licensee using the cask.

Comment F.8: One commenter asked if dry unloading is evaluated for this cask as implied by finding F3.10 and if it is it should be discussed more fully in the SER and TSs.

Response: The SAR procedures only address wet loading and unloading fuel from the NAC–MPC storage cask. Dry loading or unloading procedures are not included with this application and were not a part of the NRC staff's review. The SER was modified to indicate that the materials are compatible with wet loading and unloading operations and facilities.

G. Thermal Evaluation

Comment G.1: One commenter questioned whether the EPRI Report could be used for stainless steel clad fuel. The commenter further stated that 430° C must be the limit.

Response: The NRC disagrees with the implication that improper cladding temperature limits were established. Because the NAC-MPC is designed to store both stainless steel clad and zircaloy clad fuel, the most restrictive temperature limit was used for both the short term and long term storage. These temperature limits bound both types of cladding and therefore, segregating the fuel is not necessary. For general information, the short term temperature limit of 806° F and 430° C are the identical temperature except they are on different temperature scales.

Comment G.2: One commenter asked about the gas in the fuel rods contained in RFAs concerning what it is and whether it will come out over time.

Response: The fuel contained in the RFAs is by definition failed fuel or fuel that has cladding defects. Therefore, it is reasonable to assume that any fission product gases have been released from the rods before to placement into the MPC and that any residual gases have been further reduced to negligible amounts after vacuum drying the canister and purging it with helium.

Comment G.3: One commenter questioned whether 200°F is conservative enough for the water temperature during loading operations because of possible defects in measuring devices.

Response: Defects in temperature measuring devices would not result in an operational safety problem. As a result, Technical Specification 3.1.1 has been deleted (see response to comment H.6). The operating procedures now impose a 20-hour time limit supported by analysis to prevent the water in the canister from approaching boiling during welding operations and through draining.

Comment G.4: One commenter questioned whether 24 hours for the helium filled canister to be in the pool is adequate to cool the canister before restarting loading operations. The commenter asked how a helium filled canister reacts in the pool and if an analysis has been conducted. The commenter also asked if the term ''drying'' meant the same thing as ''cooling''.

Response: In Limiting Condition for Operation (LCO) 3.1.5, the term ''drying'' means vacuum drying where the spent fuel cladding temperature rises due to the lack of a surrounding medium to remove heat. The term ''cooling'' refers to either in pool cooling or external forced air cooling supplied through the eight connections at the bottom of the transfer cask where the air is forced inside the transfer cask and directed up the outside of the canister, cooling the outside of the canister. As stated in the bases section of the TSs, the temperature of the fuel cladding, based on analysis, will be below 466°F after 24 hours of either in pool cooling or forced air cooling considering an assumed maximum decay heat loading. Therefore, after in pool cooling or forced air cooling, the maximum time to place the canister in the concrete cask is 25 hours (refer to revised LCO 3.1.6.2) that will result in a cladding temperature less than the limit of 806°F, based on analysis. LCO 3.1.6.2 was revised to correct an editorial error on the time duration. As discussed above, the thermal analysis and TS bases support a 25-hour time duration instead of the 15-hour duration previously specified.

Also, under LCO 3.1.5, if the LCO time limits are not met, the transfer cask with the helium filled canister can be placed in the spent fuel pool for cooling. No reaction is anticipated between the helium-filled canister and the pool because the canister is made of corrosion resistant material. Water is prevented from entering the canister since the shield lid welding operations have been completed and by the quick disconnect fittings. Therefore, the helium filled canister placed in the pool is bounded by the standard loading configuration when pool water is in direct contact with the basket internals.

Comment G.5: One commenter asked for clarification of the required actions for LCO 3.1.6 and for forced air cooling.

Response: If the time limits stated in LCO 3.1.6 are not met, one required action is to begin air cooling of the canister by supplying cooling air through the eight connections at the bottom of the transfer cask. This supplies forced air cooling to the outside surface of the canister before exiting out the top of the transfer cask. This action is allowed at the licensee's option in lieu of in pool cooling. As stated in the bases for the subject LCO, this forced air cooling (250 CFM of air at 75°F maximum) is sufficient to maintain the fuel cladding below 644°F (*i.e.*, the long term temperature limit) when cooled in this manner for at least 24 hours. However, because this is a short term event, the short term temperature limit for the fuel cladding (*i.e.*, 806°F) is applicable. Therefore, the time limit of 25 hours that is applicable after the forced air cooling is stopped until the canister is placed in the concrete cask does not result in a temperature rise that would cause the short term cladding temperature limit to be exceeded. No temperature measurements are required to be taken during this action because analysis provides the justification for this approach. If something went wrong (*e.g.*, air supply lost) during cask loading evolutions, the licensee would have the option of placing the helium filled canister in the spent fuel pool. TS 3.1.10 has been added to address time limitations for canister removal from a concrete cask to another concrete cask or the NAC–STC transport cask.

Comment G.6: One commenter questioned if there was an outlet air temperature for air cooling. The commenter further questioned whether forced air cooling works, if it had ever been tested and checked, and what happens if it does not work. The commenter stated that the short-term temperature limits must be maintained.

Response: For forced air cooling of the canister with air supplied at the transfer cask's eight lower connections at a rate of 250 cfm and maximum temperature of 75° F, no monitoring of the outlet air temperature is required. Cooling in this configuration has been evaluated by analysis. See also the response to comment G.5 for a discussion of meeting short term temperature limits.

Comment G.7: One commenter questioned whether cooling water recirculation flow had ever been tried and tested, how long it takes to connect and disconnect the system, and if the flow was through the in pool condenser unit. The commenter asked if there were emergency plans if the system does not work adequately.

Response: The section of the technical specifications associated with monitoring the temperature of the water in the canister during loading operations has been deleted (see response to comment H.6). However, monitoring of the water temperature is a part of the operating procedures. Based on analysis, cooling of the water will not be needed based on analysis because 20 hours is a reasonable amount of time to complete the associated operations of shield lid welding, pressure test, and draining. However, if it appears that there is not enough time to complete these operations, contingencies like recirculating cooling water through an in pool heat exchanger or placing the transfer cask back in the fuel pool will be available through planning, procedures and rehearsal before actually loading fuel. The cooling of the water is not critical to this loading operation or to maintaining the cladding temperature limit. However, the

presence of water is necessary for shielding. Therefore, as long as the water level is maintained, it will perform its shielding function.

Comment G.8: One commenter asked where and how the external temperature is measured.

Response: The external temperature refers to an outside ambient temperature representative of the environment in which the transfer cask might be used. The method of measuring ambient temperatures is a site-specific consideration for the NAC-MPC system user and should be employed using good engineering practice.

H. Technical Specifications

Comment H.1: One commenter indicated that the concrete and soil specifications do not meet the inclusion criteria of 10 CFR 72.44 and should not be included in the Technical Specifications.

Response: The NRC disagrees that the specifications can be removed at this time. The NRC staff determined that the concrete and soil specifications proposed by the applicant were acceptable for ensuring that the cask remains within the design envelope. In order to remove this specification, technical justification is necessary and may be accomplished through the amendment process. Concrete and soil specifications are useful for establishing the site parameter conditions to ensure that once they are met, the impact force associated with a cask tipover accident is bounded by the design basis load considered in evaluating the storage cask. By complying with these specifications, a user is relieved of the burden of calculating the cask impact force for a tipover accident.

Comment H.2: One commenter requested that the TS for the ISFSI pad concrete compressive strength be changed to less than 4,000 psi at 28 days.

Response: The NRC agrees with the comment. SAR Section 11.2.12 has considered a concrete compressive strength of 4,000 psi for the ISFSI pad bounding this revision. The staff also considered a concrete compressive strength of 4000 psi in its SER. SAR Section 4.4, Appendix A of Chapter 12, ''Site Specific Parameters and Analysis,'' Item 6c, has been revised to read: ''≤ 4,000 psi at 28 days.''

Comment H.3: One commenter requested that TS for the ISFSI pad concrete density be changed to $125 \leq \rho \leq 150$ lbs/ft^3.

Response: The NRC agrees with the comment. NAC's additional calculations with a concrete density up to 150 lbs/ft^3 have shown the maximum impact force of < 45 g, the bounding impact loading considered in SAR Section 11.2.12. SAR Section 4.4, Appendix A of Chapter 12, has been revised as suggested.

Comment H.4: One commenter requested that the soil density upper limit TS be modified to read ''$85 \leq \gamma \leq 130$ lbs/ft^3.''

Response: The NRC agrees with the comment. NAC's additional calculations with a soil density up to 130 lbs/ft^3 have shown a maximum impact force of < 45 g, which is bounding. SAR Section 4.4, Appendix A of Chapter 12, has been revised as suggested to provide flexibility in the selection of available material.

Comment H.5: One commenter requested that a tolerance of ± 50 be included with this site specific parameter for soil stiffness in order to accommodate soil variability. The commenter recommends that the soil stiffness be expressed as $200 \leq k \leq 300$ psi/inch, where k is the sub-grade modulus.

Response: The NRC agrees with the comment. NAC's additional calculations with a soil stiffness up to 300 psi/in have shown a maximum impact force of < 45 g, which is bounding. Because the lower limit soil stiffness is not meaningful for determining the maximum cask tipover impact force, it need not be considered a soil site parameter. SAR Section 4.4, Appendix A of Chapter 12, ''Site Specific Parameters and Analyses,'' Item 6f, has been revised to read: ''$k \leq 300$ psi/in.''

Comment H.6: One commenter recommended that LCO Section 3.1.1, ''Canister Water Temperature'' and its basis be removed from the TSs because this process variable does not represent a significant risk to the public health and safety and is not consistent with the inclusion criteria of 10 CFR 72.44. The commenter recommends that the TS be modified to add air cooling of the canister as an alternative.

Response: The NRC agrees with the comment that the canister water temperature technical specification can be removed from Chapter 12 because defects in temperature measuring devices would not result in an operational safety problem. The operating procedures of Chapter 8 of the SAR have been modified to remove the reference to the subject LCO and to include the 20-hour time limit associated with the rise in canister water temperature after its removal from the spent fuel pool to the completion of draining operations. This limit is necessary to ensure that water remains in the canister for shielding purposes but is not critical to ensuring adequate cooling of the fuel cladding. However, vacuum drying and transfer operations are both controlled by time limits through the TSs because they contribute significantly to the temperature rise of the fuel cladding during these loading operations.

Comment H.7: One commenter noted that the time for vacuum drying is not defined consistently in the TSs and recommended the use of ''completion of canister draining operations'' as the definition. The commenter also recommended revising the bases section of the TS to address forced air cooling.

Response: The NRC agrees with the comment. The associated surveillances in Surveillance Requirement (SR) 3.1.5.1 and SR 3.1.5.2 have been changed to monitor elapsed time from the completion of canister draining operations until the start of helium backfill. Also, the NRC agrees that forced air cooling (at 250 CFM with 75°F maximum air temperature for 24 hours minimum) be permitted as an alternative cooling method under the required actions section of LCO 3.1.5.

Comment H.8: One commenter recommended that LCO 3.1.5.2 be revised to clarify the term ''in pool cooling'' and to revise the Required Action to allow air cooling.

Response: The NRC disagrees with the comment and believes the LCO, including the term ''in pool cooling,'' is adequate. The comment lacks specifics as to what is being proposed and if some other cooling configuration is planned then details regarding that cooling arrangement need to be presented.

Comment H.9: One commenter recommended that the Technical Specifications contain a consistent definition of the time duration in LCO 3.1.6.1 and SR 3.1.6.1.

Response: The NRC agrees with the comment. However, the initiation of the time duration has been modified to ''from the introduction of helium backfill'' to be consistent with the previous LCO 3.1.5 and not ''from the completion of backfilling'' as requested in the comment. The consistency between LCO's 3.1.5 and 3.1.6 is necessary to avoid any unaccounted time for heatup of the canister and contents during loading operations.

Comment H.10: One commenter requested that the 1,000 cfm value in Required Action A.2.1 of LCO 3.1.5 and the supporting bases be changed to 250 cfm.

Response: The NRC agrees with the comment. Air at 250 cfm with 75°F maximum temperature for 24 hours minimum is an adequate cooling rate. The Required Action and the bases have been changed. Required Action A.1.2

was also changed to add eight connections to supply cooling air instead of the current two connections to ensure even air distribution around the canister.

Comment H.11: One commenter recommended that the Bases for SR 3.1.6.2 be revised to allow forced air cooling.

Response: The NRC agrees with the comment and has added the words ''or forced air cooling'' to the last sentence in the Bases Section SR 3.1.6.2, because forced air cooling is a permissible cooling option.

Comment H.12: One commenter recommended that the TS for fuel cooldown requirements addressing wet unloading be clarified to only be applicable for licensees maintaining spent fuel pools beyond dry fuel storage or be deleted.

Response: The NRC agrees with the comment. The intent of the first note in LCO 3.1.7 was that this technical specification only applies to wet unloading operations using a spent fuel pool. Interim Staff Guidance No. 2, ''Fuel Retrievability'' and No. 3, ''Post Accident Recovery and Compliance with 10 CFR 72.122(i)'' state that spent fuel pools are not required to be maintained for dual purpose designs.

Comment H.13: One commenter noted an inconsistency between the SAR and TSs concerning the canister pressure test value and stated that the correct value is 50 psig.

Response: The NRC agrees with the comment. However, because the test pressure is not invoked by other parts of the technical specification, it has been removed from the table for canister limits. The operational procedures remain unchanged and still specify a 50 psig pressure test.

Comment H.14: One commenter recommended that the TSs be revised to reflect the latest NRC-accepted format, *i.e.,* the UMS TSs.

Response: Large-scale changes to re-format the NAC–MPC TS similar to those of the NAC–UMS or other cask rulemakings should be incorporated through the amendment process. Focused comments modeled after the NAC–UMS regarding the implementation of individual technical specifications have been addressed separately and incorporated in this rulemaking action.

Comment H.15: One commenter stated that the note for LCO 3.1.7 concerning applicability should be located at the top of the page because it was confusing where it is currently located.

Response: The NRC disagrees with the comment. The note is directly below the APPLICABILITY statement and is intended to clarify the operations for which the technical specification is applicable. The APPLICABILITY statement and its location are in accordance with the standard format for technical specifications.

Comment H.16: One commenter stated that TS 3.1.7 should be clarified to make it clear that the transport operations mentioned are limited to onsite transport to and from the pad.

Response: The NRC disagrees with the comment. The term TRANSPORT OPERATIONS is clearly defined in the technical specification DEFINITIONS and includes all activities involved in moving a loaded NAC–MPC concrete cask and canister to and from the ISFSI pad. Further clarification of the term is not warranted.

Comment H.17: One commenter asked what is meant by the terms ''outside of the fuel handling facility'' and ''external to the facility'' in LCO 3.1.9. The commenter further questioned whether this TS could be used for dry transfer at the pad.

Response: The terms ''outside of the fuel handling facility'' and ''external to the facility'' refers to handling operations of a transfer cask outside of a covered or heated facility as described in the Bases for the TS. The intent of the specification is to ensure that the structural integrity of the transfer cask and its capability to handle and shield a loaded canister is maintained for the temperatures experienced by the ferrous materials of the transfer cask.

A dry unloading operation of spent fuel in the canister was not requested or explicitly described in the SAR and thus is not currently allowed for the NAC–MPC system and is beyond the scope of this rulemaking. The NAC–MPC system is designed to facilitate, using the transfer cask, the dry transfer of a closed canister to the NAC–STC transport cask without the need to unload the canister in a pool. This dry transfer from a vertical concrete cask used for storage to the NAC–STC transport cask would be carried out at a facility that meets both the heavy-loads and overall regulatory requirements for licensed operation, and could be located at or adjacent to the ISFSI pad. Site-specific evaluations and procedures for these operations, consistent with the technical basis established in the storage and transport cask SARs, are required to be developed by the cask user.

Comment H.18: One commenter stated that utilities should not be allowed to use the provisions of Surveillance Requirement (SR) 3.0.2 repeatedly and that allowance for operational convenience should not be provided.

Response: The NRC disagrees with this comment. As stated in the Bases for this specification, the 25 percent extension facilitates surveillance scheduling and considers facility conditions that may not be suitable for conducting the surveillance. The 25% extension does not significantly degrade the reliability that results from performing the surveillance at its specified frequency because the most probable result of any particular surveillance being performed is a verification of conformance. This provision is consistent with the standard format for TSs.

Comment H.19: One commenter stated that the Bases for TS 3.1.1 should describe what is meant by ''transfer cask and canister in position'', what is meant by on top of the concrete shell and the actual height, and the doors that open at the base and how they work in loading and unloading. The commenter further asked if the procedures had been evaluated for the reverse in unloading and if a dry run had been conducted. The commenter also thought that sampling for water temperature should begin at 12 hours instead of 18 hours.

Response: The background section of the Bases for TS 3.1.1 contains an appropriate amount of detail for an overview of canister and transfer cask operations pertinent to the specification of maximum canister water temperature. Further descriptions of transfer operations are located in Chapters 1 and 8 of the SAR and the NRC staff's SER, including a description of the transfer cask relative to the concrete cask during transfer operations, component dimensions that detail the height of the concrete cask and transfer cask designs, and operation of the shield doors during transfer operations. The start time for monitoring water temperatures was determined based on a bounding conservative analysis found to be adequate by the NRC staff. Detailed site-specific loading and unloading procedures are to be developed by the cask user based on the technical basis established in the SAR . The performance of site-specific dry runs including a canister unloading procedure before the initial system loading is specified in the TS as Administrative Control 5.2.

In response to comment G.3, TS 3.1.1 and its associated Bases have been removed. The NRC staff agrees that the monitoring of canister water temperatures is more appropriately controlled in the detailed site-specific operating and welding procedures. Because the welds are ultimately

examined for acceptance, there would be an insignificant benefit to health and safety of the public by controlling the canister water temperatures in the TS.

I. Miscellaneous

Comment I.1: One commenter asked what kind of deformation of the cask was acceptable in the 30-foot drop test.

Response: The 30-foot drop test is a hypothetical accident condition in 10 CFR Part 71 and is not evaluated for storage. The comment is beyond the scope of this rule.

Comment I.2: One commenter questioned the use of a heavy haul trailer instead of a transporter.

Response: A heavy-haul trailer is described in the application as the method for moving the loaded vertical concrete cask from the fuel handling facility to the ISFSI pad. The method of transport is a site-specific consideration and is subject to the required evaluations under 10 CFR 72.212 to be performed by the cask user to ensure that the NAC–MPC system is used within its analyzed design basis.

Comment I.3: One commenter asked the definition for a post-shutdown decommissioning activities report (PSDAR).

Response: A PSDAR is required to be submitted by reactor licensees no later than 2 years after the permanent cessation of operations. The PSDAR describes planned decommissioning activities, a schedule for accomplishment of significant milestones, an estimate of expected cost, and documents that environmental impacts associated with site-specific decommissioning activities have been considered in previously approved environmental impact statements. The licensee must submit a license amendment request if all of the environmental impacts of decommissioning have not been considered in existing environmental assessments.

Comment I.4: One commenter asked how a lift limit of 3 inches for air pad use could be enforced and whether an air pad has ever failed. The commenter further questioned what happens if an air pad deflates or bursts while in use. The commenter also asked how smooth the pad needs to be for air pads to work, if they can work over ice, and how they are removed.

Response: The maximum lifting height of 6-inches maintains the NAC–MPC system within the design and analysis basis during transport operations of the loaded concrete cask to the ISFSI pad. The NAC–MPC system has been evaluated and found acceptable for a 6-inch VCC drop that bounds the failure of the air pad. An air pad creates an air ''filler'' between the inflated air cushion and the supporting surface. A reasonably smooth supporting surface, such as an ISFSI pad, facilitates optimum performance of an air pad. From a performance standpoint, an air pad would be able to work over a supporting surface coated with ice, although this is obviously not a desired condition for cask movement operations. It is the general licensee's responsibility to limit the VCC lifting height to allowable values. The lift height requirements are specified in TS LCO 3.1.8. Surveillance requirements require verification that VCC lifting requirements are met after the VCC is lifted to install or remove the air pad, and prior to moving the VCC to and within the ISFSI.

Comment I.5: One commenter stated that the inlet and outlet vents (and screens) need to be checked for blockage due to snow and ice, bird nests, leaves, sand, etc., and that the screens should be cleaned. The commenter asked how the outlets are visually inspected each day and asked if the inlets and outlets were non-planar.

Response: The TSs require the cask user to establish a thermal monitoring program for each cask. The program entails daily measurements of inlet and outlet air temperatures and visual inspection of the inlets and outlets or other appropriate actions for any unexplained reading. As a result of the daily surveillances, appropriate actions are to be taken in response to abnormal indications that would include the clearing of any blockages associated with the air passages. The cooling air pathways are non-planar and designed to minimize radiation streaming at the inlets and outlets.

Comment I.6: One commenter asked that the acceptably low amount of water and potentially oxidizing material remaining in the TSC be specified.

Response: The term ''acceptably low amount of water and potentially oxidizing material remaining in the TSC'' refers to the 1 gram-mole limit for oxidizing species recommended in PNL–6365, ''Evaluation of Cover Gas Impurities and Their Effects on the Dry Storage of LWR Spent Fuel.'' As stated in this report, if the amount of oxidizing species is less than the 1 gram-mole limit, damage to the fuel cladding as a result of fuel oxidation will be precluded.

Comment I.7: One commenter asked the difference between a suction pump and a vacuum pump, and why a suction pump is used. The commenter further questioned the amount of water removed, the basis for the specific amount, and why the quantity is not the same for each plant.

Response: A suction pump is used to remove water from the canister cavity. Approximately 50 gallons of water corresponding to an air space of about 3 inches by 70 inches in diameter are removed from every cask (independent of which plant is using the cask) to keep moisture away from the regions that need to be welded (*e.g.,* shield lid-to-shell weld, *etc.*). Removal of this amount of water is adequate to perform the welding operations and still provide enough shielding to the workers performing the welding and inspection operations. On the other hand, a vacuum pump is used to remove residual moisture, air, and other gases during vacuum drying after all of the water has been removed from the TSC. Removal of the water and vacuum drying reduce the quantity of oxidizing species in the cask to below 1 gram-mole recommended in PNL–6365, ''Evaluation of Cover Gas Impurities and Their Effects on the Dry Storage of LWR Spent Fuel.'' As stated in this report, if the amount of oxidizing species is less than the 1 gram-mole limit, damage to the fuel cladding as a result of fuel oxidation will be precluded. The amount of water removed is specific to this cask-design to facilitate welding operations and for ALARA considerations, and is not appropriate as a specific criterion for other cask designs.

Comment I.8: One commenter asked if all water evaporates due to the vacuum, even the water in gas or in solids, and fuel debris inside the tubes.

Response: After most of the water has been removed from the cask, there may be a small amount at the bottom of the cask trapped in crevices or other small confined spaces that the suction pump cannot remove. The combination of the heat from the spent fuel and the low pressure (i.e., 3 mm mercury pressure) during vacuum drying will aid in the removal of residual water and moisture from the cask. As noted in the previous response (response to comment I7), the vacuum drying procedures described in SAR Section 8.1 will ensure there is less than 1 gram-mole of oxidizing species in the TSC.

Comment I.9: One commenter questioned the makeup of the pool water, whether the canister changed the composition, what kind of chemical reactions can take place, whether they have been evaluated, and who checks the water.

Response: The maintenance of the spent fuel pool water chemistry is beyond the scope of a 10 CFR Part 72 cask review. However, a Part 72 cask

review does include consideration of chemical and galvanic reactions that may take place while a storage canister and associated hardware are in the spent fuel pool. The materials employed for the transfer cask and the TSC are compatible with wet loading and unloading operations and facilities, and no reactions that affect the spent fuel pool chemistry or water quality are expected.

Comment I.10: One commenter asked who the experienced fabricators are who will ensure the process chosen for a durable cask.

Response: In general, NRC reviews and approves the applicant's quality assurance (QA) program as described in SAR Chapter 13. However, the cask user is ultimately responsible for ensuring the fabricator's QA programs comply with 10 CFR Part 72, Subpart G. Additionally, most storage cask fabricators are certified by the American Society of Mechanical Engineers and are N-Stamp Certificate holders. The N-Stamp Certificate is a certificate that enables a vendor to fabricate certified components for nuclear applications.

Comment I.11: One commenter asked if the characteristics of the epoxy enamel have been checked and considered, and referred to a problem at Trojan concerning curing time.

Response: For the NAC–MPC cask, the applicant demonstrated in SAR Section 3.4.1 that there will be no adverse reactions caused by the epoxy enamel coating. The NRC concurs with the SAR evaluation and concludes the designs of the TSC and transfer cask meet the regulatory requirements. The NRC staff has reviewed the problems at Trojan with basket coatings and has concluded that the Trojan issues do not affect our acceptance of the NAC–MPC coating.

Comment I.12: One commenter questioned whether cobalt impurity and other contaminants had been fully evaluated for interaction concerns in storage and unloading.

Response: The level of cobalt impurity and other contaminants have been evaluated in determining the source term and dose rates that are applicable to loading, storage, and unloading operations. The cobalt and other contaminants are mainly gamma emitters that will increase the dose rate on the surface of the concrete cask. The source term and dose rate evaluations have been reviewed and have been found to be acceptable.

Cobalt is an unintended impurity element that is incorporated in fuel component materials during fabrication. Accordingly, there is such a small amount of cobalt (*i.e.,* parts per million concentration) and other impurities in fuel component hardware that no reactions with other cask components during loading, storage, or unloading is expected.

Comment I.13: One commenter asked what transfer operations ocur in loading and unloading in relation to the use of lead bricks in the transfer cask.

Response: Section 3.1.4.2 of the SER indicates that the temperature of the lead bricks during transfer operations are well below the melting point of this material. The use of the words ''transfer operations'' in this sentence refers to the time that the TSC is loaded inside the transfer cask. Thus, the highest temperature that the lead bricks will experience (*i.e.,* 191°F, as noted in SAR Section 4 and Table 4.1–4) is expected to occur only when the TSC contains design basis fuel and is loaded inside the transfer cask.

Comment I.14: One commenter asked what temperatures would be expected if vacuum drying or helium refill took longer than expected.

Response: In general, the longer vacuum drying or helium transfer takes, the higher the temperatures will be. The rate at which these temperatures would increase is shown graphically in SAR Figure 4.4.3–5, ''History of Maximum Component Temperatures for the Nominal Transfer Conditions''. However, the temperatures of components like the fuel cladding are prevented from exceeding their respective temperature limit of 806°F by imposing time limitations during vacuum drying and helium transfer operations. If these time limits are exceeded, required actions are imposed that would prevent the temperature limits from being exceeded.

Comment I.15: One commenter asked what happens if the fuel reaches the temperature limit when conducting a ultrasonic test and if the test is done when the TSC is in the transfer cask.

Response: The welding during loading operations and their associated examinations are performed while the canister is in the transfer cask. The NAC–MPC is designed and operated to preclude the spent fuel from reaching its cladding temperature limits. Therefore, the possibility of performing a UT examination (which is optional to the licensee in lieu of a progressive PT) while the fuel cladding is at its maximum temperature limit is very remote, if not non-existent. However, if the licensee was concerned that the cladding temperature limit was being approached, the licensee would follow the technical specifications and initiate forced air cooling or in pool cooling, and there would be no adverse consequences.

Comment I.16: One commenter asked how can a cask user be certain of the temperature of the lead in the transfer cask. The commenter further questions whether the cask user would know if the lead slumps and hot spots form on the outside of the transfer cask.

Response: The temperature of the lead being below its melting point is assured by design analysis, thermal testing of the first loaded canister above a threshold heat load, and by operating procedures. During unloading, if the canister was placed in the transfer cask for a relatively long period of time (approximately 48 hours for maximum decay heat load) without commencing the cool down in accordance with LCO 3.1.7, some material temperature limits could be exceeded. Therefore, a new LCO 3.1.10 has been added to provide restrictions on the time a canister can be in the transfer cask during unloading operations.

Comment I.17: One commenter questioned how the NS–4–FR neutron shielding could have a high hydrogen content and be fire resistant. The commenter further questioned if hydrogen gas could be created from the neutron shielding.

Response: The NS–4–FR material consists of many elements including hydrogen. The chemistry of the material (*e.g.,* the way the elements are bonded to one another) contribute significantly to the fire retardant capability of the NS–4–FR. Even though the material contains hydrogen, the ingredients were selected so that the NS–4–FR resists fire and hydrogen gas generation that could cause the material to combust.

Comment I.18: One commenter asked if all the chemical analysis for a cask drop or tipover in the transfer cask had been evaluated for possible interaction due to water leaks or gas generation.

Response: Cask drops and tipover analyses of the transfer cask are beyond the scope of the review.

Comment I.19: One commenter questioned why the word ''if'' was used in describing the need for girth welds. The commenter stated that they should know if it is needed.

Response: The NRC agrees with the comment. The SAR drawings indicate that both seam and girth welds will be used to fabricate the TSC. The SER has been modified accordingly.

Comment I.20: One commenter asked about lead slumping.

Response: Lead slumping is a term that describes the metal flow processes that can occur due to impact, stress, or softening at temperatures close to the melting point of lead (e.g., around

600°F). This phenomenon would only be a concern for the lead that is in the annulus of the transfer cask while the TSC is contained inside. When the transfer cask is not being used, the lead is assumed to be at ambient temperatures. Further, the calculated maximum temperature of the lead during transfer of the TSC from the spent fuel pool facilities to the VCC is 191°F under the conditions the applicant has analyzed in SAR Section 4.4.3. Because this temperature is significantly lower than the melting temperature, no softening or flow of lead in the annulus due to lead slumping is expected.

Comment I.21: One commenter asked how the fuel debris could affect unloading if it clogs the drain tubes during reflooding and stated that this issue should be addressed along with the operating procedures to transfer a loaded cask.

Response: Fuel debris is defined in the TS and is handled within individual fuel tubes in an 8 x 8 array within an RFA. The fuel tubes and RFA are designed to preclude the release of gross particles to the canister. Similar radiological precautions would need to be taken by the cask user for both the loading and the unloading evolution when handling fuel debris. The technical basis for the development of site-specific operating procedures for transferring a loaded canister to the NAC–STC for transport have been approved for Certificate of Compliance No. 71–9235.

Summary of Final Revisions

As a result of the staff's response to public comments, or to rectify issues identified during the comment period, the following items in the TSs have been modified: (1) TS Design Feature Section 4.4.6 (see comments H.2, H.3, H.4 and H.5); (2) TS LCO 3.1.5 (see comments H.7 and H.10); (3) TS LCO 3.1.6 (see comments H.9 and H.11); and (4) TS Table 3–1, Canister Limits (see comment H.13). In addition TS LCO 3.1.1 was deleted (see comments G.3, G.7 and H.6) and TS 3.1.10 was added (see comment G.5). The staff has also updated the CoC, including the addition of explicit conditions governing acceptance tests and maintenance program, approved contents, and design features, and has removed the bases section from the TSs attached to the CoC to ensure consistency with NRC's format and content.

The title of the SAR has been revised to delete the revision number so that in the final rule the title of the SAR is ''Final Safety Analysis Report for the NAC Multi-Purpose Canister (NAC–MPC) System.'' The staff has also modified the rule language by changing the word ''certification'' to ''certificate'.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. This final rule adds an additional cask to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals from the Commission. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8126, e-mail mlh1@nrc.gov.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

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

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is adding the NAC–MPC cask system to the list of NRC-approved cask systems for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR Part 72. The amendment provided for the storage of spent nuclear fuel in cask systems with designs approved by the NRC under a general license. Any nuclear power reactor licensee can use cask systems with designs approved by the NRC to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be routinely added to the listing in 10 CFR 72.214 through the rulemaking process. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR Part 72, Subpart L.

The alternative to this action is to withhold approval of this new design and issue a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and utilities more time and money for each site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under a general license, and would be in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors

without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees. This final rule will eliminate the above problems and is consistent with previous Commission actions. Further, the rule will have no adverse effect on public health and safety.

The benefit of this rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plants in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and NWPA direction to certify and list approved casks. This rule has no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the Commission's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Small Business Regulatory Enforcement Fairness Act

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

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and NAC. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects 10 CFR Part 72

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

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

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

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

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

b. In § 72.214, Certificate of Compliance 1025 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.

SAR Submitted by: NAC International.

SAR Title: Final Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC–MPC System).

Docket Number: 72–1025

Certificate Expiration Date: April 10, 2020.

Model Number: NAC–MPC.

Dated at Rockville, Maryland, this 24th day of February, 2000.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Acting Executive Director for Operations.

[FR Doc. 00–5588 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–06–AD; Amendment 39–11619; AD 2000–05–10]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90–85B Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company GE90–85B series turbofan engines. This action requires removing from service aft mount whiffletrees prior to reaching a new cyclic life limit, and replacing with serviceable parts. This amendment is prompted by a reassessment of the low cycle fatigue capability of the engine mount system due to an increase in engine and propulsion system weight. The actions specified in this AD are intended to prevent aft mount

whiffletree failure, which if it occurred with other critical aft mount component failures, could possibly result in an engine mount system failure, and separation of the engine from the aircraft.

DATES: Effective April 7, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 8, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–06–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7135, fax 781–238–7199.

SUPPLEMENTARY INFORMATION: General Electric Company (GE), the manufacturer of GE90–85B series turbofan engines, has recently reassessed the low cycle fatigue (LCF) capability of the engine mount system due to an increase in engine and propulsion system weight. The analysis indicates a reduction in the LCF life for aft mount whiffletree, part number (P/N) 1692M12G02. Prior to completing the assessment for the engine weight and propulsion system weight increase, there was no life limit for the aft mount whiffletree, P/N 1692M12G02, in Chapter 5, Airworthiness Limitations Section, of the Engine Manual for GE90–85B engines because the calculated LCF life value was greater than the aircraft life. Chapter 5 has now been revised to include a new life limit for the aft mount whiffletree, P/N1692M12G02, of 18,000 cycles-since-new (CSN). An aft mount whiffletree failure, which if it occurred with other critical aft mount component failures, could possibly result in an engine mount system failure, and separation of the engine from the aircraft.

New Components

GE has developed improved aft mount whiffletrees that are eligible for installation on all GE90 engine models and do not have a life limit. The majority of GE90 engines in revenue service incorporate one of these improved wiffletrees.

No Domestic Engines

The FAA estimates that there are only 3 engines in revenue service that contain the aft mount whiffletree, P/N 1692M12G02, and that none of these are installed on aircraft of US registry.

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent aft mount whiffletree failure. This AD requires removing from service aft mount whiffletrees prior to accumulating 18,000 CSN, and replacing with serviceable parts.

Immediate Adoption

There are currently no domestic operators of this engine model with the affected component installed. Accordingly, a situation exists that allows the immediate adoption of this regulation. Notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–06–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (EO) No. 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under EO No. 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–05–10 General Electric Company: Amendment 39–11619. Docket 2000–NE–06–AD.

Applicability: General Electric Company (GE) GE90–85B series turbofan engines, with aft mount whiffletrees, part number (P/N) 1692M12G02, installed. These engines are installed on but not limited to Boeing 777 series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent aft mount whiffletree failure, which if it occurred with other critical aft mount component failures, could possibly result in an engine mount system failure, and separation of the engine from the aircraft, accomplish the following:

New Life Limit

(a) Remove from service aft mount whiffletrees, P/N 1692M12G02, before accumulating 18,000 cycles-since-new, and replace with serviceable parts.

(b) Except for the provisions of paragraph (c) of this AD, no aft mount whiffletrees, P/N 1692M12G02, may remain in service beyond the new life limit stated in paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

(d) This amendment becomes effective on April 7, 2000.

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

Diane S. Romanosky,

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

[FR Doc. 00–5582 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–76–AD; Amendment 39–11620; AD 2000–05–11]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA.315B, SA.316B, SA.316C, SA 318B, SA 318C, SA.319B, SE 313B, SE 3130, SE.3160, and SA 3180 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model SA.315B, SA.316B, SA.316C, SA 318B, SA 318C, SA.319B, SE 313B, SE 3130, SE.3160, and SA 3180 helicopters that have certain tail rotor blades (blades) installed. This action requires reducing the service life of those blades to 400 hours time-in-service (TIS). This amendment is prompted by the discovery that 10 blades were manufactured incorrectly. This condition, if not corrected, could result in failure of a blade and subsequent loss of control of the helicopter.

DATES: Effective March 24, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–76–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model SA.315B, SA.316B, SA.316C, SA 318B, SA 318C, SA.319B, SE 313B, SE 3130, SE.3160, and SA 3180 helicopters. The DGAC advises that the service life must be reduced on the blades due to the discovery of a non-compliance of blade cuff-stems (blade to hub attachment) metallurgical structure affecting the service life.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the 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 these type designs 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 Eurocopter France Model SA.315B, SA.316B, SA.316C, SA 318B, SA 318C, SA.319B, SE 313B, SE 3130, SE.3160, and SA 3180 helicopters of the same type designs registered in the United States, this AD is being issued to prevent failure of a blade and subsequent loss of control of the helicopter. This AD requires reducing the service life of certain serial-numbered blades, part number 3160S34.11.000.00, to 400 hours TIS. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, retiring the blades from use upon reaching 400 hours TIS is required prior to further flight and this AD must be issued immediately.

None of the Model SA.315B, SA.316B, SA.316C, SA 318B, SA 318C, SA.319B, SE 313B, SE 3130, SE.3160, and SA 3180 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require only a few minutes to note the changed retirement life in the maintenance manual, therefore the cost impact is negligible.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in

less than 30 days after publication in the **Federal Register**.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–76–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that notice and public comment are unnecessary in promulgating this regulation; therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States. The FAA has also determined that this regulation is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 2000–05–11 Eurocopter France: Amendment 39–11620. Docket No. 99–SW–76–AD.

Applicability: Eurocopter France SA.315B, SA.316B, SA.316C, SA 318B, SA 318C, SA.319B, SE 313B, SE 3130, SE.3160, and SA 3180 helicopters, with tail rotor blades, part number (P/N) 3160S34.11.000.00, serial numbers (S/N) 23484 through 23493, installed, certificated in any category.

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

Compliance: Required before further flight, unless accomplished previously.

To prevent failure of a tail rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove each tail rotor blade, P/N 3160S34.11.000.00, S/N 23484 through 23493, upon reaching 400 hours time-in-service (TIS). Replace each blade with an airworthy tail rotor blade.

(b) This AD revises the Limitations Section of the maintenance manual by establishing a new life limit of 400 hours TIS for the tail rotor blades.

(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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

(d) 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 helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on March 24, 2000.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD T1999–127–057(A); AD T1999–128–060(A); and AD T1999–129–043(A), all dated March 25, 1999 and AD 1999–129–043(A), AD 1999–127–057(A), and AD 1999–128–060(A), all dated April 7, 1999.

Issued in Fort Worth, Texas, on March 1, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–5733 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–88–AD; Amendment 39–11621; AD 98–21–21 R1]

RIN 2120–AA64

Airworthiness Directives; Bob Fields Aerocessories Inflatable Door Seals

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 98–21–21, which currently requires deactivating the electric door seal inflation system for all aircraft equipped with Bob Fields Aerocessories inflatable door seals. Since issuance of that AD, the manufacturer has developed a modification that would allow these electric door seal inflation systems to remain in service, and the Federal

Aviation Administration (FAA) has approved this modification. This AD requires incorporating this modification as a method of complying with the current AD, and will exclude those airplanes with manual door seal inflation systems from the AD requirements of de-activating the system. The actions specified by this AD are intended to prevent smoke and a possible fire in the cockpit caused by overheating of the electric door seal inflation systems, which could result in passenger injury.

DATES: Effective May 1, 2000.

ADDRESSES: Service information that relates to this AD may be obtained from Bob Fields Aerocessories, 340 East Santa Maria St., Santa Paula, California 93060; telephone: (805) 525–6236; facsimile: (805) 525–5286. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–88–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: George Y. Mabuni, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5341; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all aircraft equipped with Bob Fields Aerocessories inflatable door seals that are installed in accordance with either the applicable Supplemental Type Certificate (STC) or through field approval was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 29, 1999 (64 FR 58359). The NPRM proposed to revise AD 98–21–21, Amendment 39–10844 (63 FR 55321, October 15, 1998). AD 98–21–21 currently requires de-activating the electric door seal inflation system, fabricating and installing a placard specifying that the system is inoperative, and inserting a copy of the AD into the Limitations Section of the airplane flight manual (AFM).

AD 98–21–21 only applies to those aircraft equipped with the Bob Fields Aerocessories inflatable door seals. With this in mind, the owner/operator also has the option of removing all provisions of the Bob Fields Aerocessories inflatable door seals installation, and installing original equipment manufacturer door seals or an FAA-approved equivalent that is of different design than the referenced Bob Fields Aerocessories inflatable door seals.

The NPRM proposed to retain the requirements of the existing AD, would exclude those airplanes incorporating a manual inflatable door seal system from the system de-activation requirements, and would provide the option of incorporating one of the modifications referenced in Bob Fields Aerocessories Service Bulletin No. BFA–001, Date: November 3, 1998, as a method of accomplishing the AD.

The NPRM was the result of the manufacturer developing a modification that would allow these electric door seal inflation systems to remain in service, and the Federal Aviation Administration (FAA) approved this modification.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA does not know the number of aircraft that have the affected electric door seal inflation systems installed. The FAA estimates that it will take approximately 3 workhours per airplane to accomplish the optional modifications that will allow these systems to be put back in service, at an average labor rate of approximately $60 an hour. Based on these figures, the total cost impact of the optional modification in this document on U.S. operators is estimated to be $180 per airplane aircraft equipped with Bob Fields Aerocessories inflatable door seals.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 98–21–1, Amendment 3910844 (63 FR 55321, October 15, 1998), and adding a new AD to read as follows:

98–21–21 R1 Bob Fields Aerocessories: Amendment 3911621; Docket No. 98–CE–88–AD; Revises AD 98–21–21, Amendment 39–10844.

Applicability: Electric inflatable door seals, installed either in accordance with the applicable supplemental type certificate (STC) or through field approval, that are installed on, but not limited to, the following aircraft:

Affected STC	Make and model aircraft affected
SA3735NM	Cessna Models 170, 170A, and 170B Airplanes.
SA4136WE	Cessna Models 310, 310A, 310B, 310C, 310D, 310F, 310G, 310H, 310I, 310J, 310K, 310L, 310N, 310P, 310Q, 310R, T310P, T310Q, and T310R Airplanes.
SA2226NM	Cessna Models P210N and P210R Airplanes.
SA3736NM	Cessna Models 185, 185A, 185B, 185C, 185D, A185E, and A185F Airplanes.
SA4177WE	Cessna Models 175, 175A, 175B, and 175C Airplanes.
SA4212WE	Cessna Models 210, 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, T210F, T210G, T210H, T210J, T210K, T210L, T210M, T210N, 210–5 (205), and 210–5A (205A) Airplanes.
SA4283WE	Cessna Models 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, and 172N Airplanes.
SA4284WE	Cessna Models 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, and 180K Airplanes.
SA4285WE	Cessna Models 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, R182, and TR182 Airplanes.
SA4286WE	Cessna Models 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TP206D, TP206E, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, and TU206G Airplanes.
SA4287WE	Cessna Models 320, 320A, 320B, 320C, 320D, 320E, 320F, and 320–1 Airplanes.
SA4180WE	Raytheon (Beech) Models H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 35–33, 35–A33, 35–B33, 35–C33, 35–C33A, E33, E33A, E33C, F33, F33A, F33C, G33, 36, A36, A36TC, and B36TC Airplanes.
SA4184WE	Raytheon (Beech) Models 95, B95, B95A, E95, 95–55, 95–A55, 95–B55, 95–B55A, 95–B55B, 95–C55, D55, E55, 56TC, 58, and 58A Airplanes.
SA4239WE	Raytheon (Beech) Models 58P, 58PA, 58TC, and 58TCA Airplanes.
SA4240WE	Raytheon (Beech) Models 50, B50, C50, D50, D50A, D50B, D50C, D50E, D50E–5990, E50, F50, G50, H50, and J50 Airplanes.
SA4282WE	Raytheon (Beech) Models 35, A35, B35, C35, D35, E35, F35, G35, and 35R Airplanes.
SA4178WE	Mooney Models M20, M20A, M20C, M20D, M20E, M20F, M20G, M20J, and M20K Airplanes.
SA4234WE	The New Piper Aircraft, Inc. (Piper) Models PA–34–200, PA–34–200T, and PA–34–220T Airplanes.
SA4179WE	Piper Models PA–24, PA–24–250, PA–24–260, and PA–24–400 Airplanes.
SA4235WE	Piper Models PA–44–180 and PA–44–180T Airplanes.
SA4236WE	Piper Models PA–28–140, PA–28–150, PA–28–160, PA–28–180, PA–28–235, PA–28–151, PA28–181, PA–28–161, PA–28–236, PA–28–201T, PA–28S–160, PA–28S–180, PA–28R–180, PA–28R–200, PA–28R–201, PA–28R–201T, PA–28RT–201, and PA–28RT–201T Airplanes.
SA4237WE	Piper Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 Airplanes.
SA4238WE	Piper Models PA–30, PA–39, and PA–40 Airplanes.
SA4385WP	Piper Models PA–31, PA–31–300, PA–31–325, and PA–31–350 Airplanes.
SA4288WE	Piper Models PA–32–260, PA–32–300, PA–32S–300, PA–32–301, PA–32–301T, PA–32R–300, PA–32R–301, PA–32R–301T, PA–32RT300, and PA–32RT–300T Airplanes.
SA2511NM	Bellanca Models 17–30, 17–31, and 17–31TC Airplanes.
SA2510NM	Bellanca Models 17–30A, 17–31A, and 17–31ATC Airplanes.
SA4316WE	Wing Aircraft Company Model D–1 Airplanes.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent smoke and a possible fire in the cockpit caused by overheating of the electric door seal inflation systems, which could result in passenger injury, accomplish the following:

(a) Prior to further flight after October 30, 1998 (the effective date of AD 98–21–21), deactivate the electric door seal inflation system by accomplishing the following:

(1) Disconnect the battery.

(2) Locate the air pump and identify the power wire to the air pump.

(3) Trace the power wire to its connection to the airplane's original electrical power system. Disconnect the power wire at its attachment to the airplane's electrical power system and stow the wire end.

(4) For non-pressurized airplanes, fabricate a placard that incorporates the following words utilizing letters that are at least 0.10-inch in height, and install this placard on the instrument panel within the pilot's clear view:

''ELECTRIC DOOR SEAL INFLATION SYSTEM INOPERATIVE''

(5) For pressurized airplanes or for airplanes that do not have an operating manual door seal inflation system, fabricate a placard that incorporates the following words utilizing letters that are at least 0.10-inch in height, and install this placard on the instrument panel within the pilot's clear view:

''ELECTRIC DOOR SEAL INFLATION SYSTEM INOPERATIVE. THIS AIRPLANE CAN ONLY BE OPERATED IN UNPRESSURIZED FLIGHT''

(6) Reconnect the battery before returning to service.

(b) Prior to further flight after October 30, 1998 (the effective date of AD 98–21–21), insert a copy of this AD into the Limitations Section of the airplane flight manual (AFM).

Note 2: The prior to further flight compliance time of paragraphs (a) and (b) of this AD is being retained from AD 98–21–21. The only substantive difference between this AD and AD 98–21–21 is the addition of the alternative method of compliance referenced in paragraph (c) of this AD.

Note 3: This AD only applies to those aircraft equipped with the Bob Fields Aerocessories inflatable door seals. With this in mind, the owner/operator also has the option of removing all provisions of the Bob Fields Aerocessories inflatable door seals installation, and installing original equipment manufacturer door seals or an FAA-approved equivalent that is of a different design than the referenced Bob Fields Aerocessories inflatable door seals.

(c) One of the following actions may be accomplished as an alternative method of compliance to the requirements of paragraphs (a) and (b) of this AD. No further action is required by this AD as long as one of these configurations remains incorporated on the aircraft.

(1) Modify the electric door seal inflation system in accordance with the procedures in Bob Fields Aerocessories Service Bulletin No. BFA–001, Date: November 3, 1998; or

(2) Install a manual door seal inflation system instead of an electric system. Aircraft with existing manual systems as of the effective date of this AD are excluded from the requirements of paragraphs (a) and (b) of this AD.

(d) As of the effective date of this AD, no person may install, on any aircraft, a Bob Fields Aerocessories electric door seal inflation system unless the actions specified in Bob Fields Aerocessories Service Bulletin No. BFA–001, Date: November 3, 1998, are incorporated.

(e) 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.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Blvd., Lakewood, California 90712.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance approved in accordance with AD 98–21–21 are considered approved as alternative methods of compliance for this AD.

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

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to Bob Fields Aerocessories, 340 East Santa Maria St., Santa Paula, California 93060; or may examine this document(s) at the FAA, Central Region, Office of the Regional Counsel, Room 506, 901 Locust, Kansas City, Missouri 64106.

(h) This amendment revises AD 98–21–21, Amendment 39–10844.

(i) This amendment becomes effective on May 1, 2000.

Issued in Kansas City, Missouri, on March 2, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5732 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Use of Electronic Signatures of Customers, Participants and Clients of Registrants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting new rules allowing the use of electronic signatures of lieu of handwritten signatures for certain purposes under the Commission's rules.[1] This action is part of the Commission's ongoing efforts to facilitate the use of electronic technology and media in the futures industry.

EFFECTIVE DATE: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Lawrence P. Patent, Associate Chief Counsel, or Christopher W. Cummings, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

On August 30, 1999, the Commission published for comment proposed rules to permit futures commission merchants (''FCMs''), introducing brokers (''IBs''), commodity pool operators (''CPOs'') and commodity trading advisors (''CTAs'') to accept electronic signatures from their customers, pool participants and advisory clients, as the case may be, in lieu of manual signatures in each of those instances where the Commission's rules require those registrants to obtain a signature on a document (the ''Proposing Release'').[2] As noted in the Proposing Release, this rulemaking was prompted by a request to interpret Commission rules to permit an FCM to accept, in lieu of a prospective customer's manually signed, paper acknowledgment that he received and understood the risk disclosure statement specified in Rule 1.55, an electronic mail message to that effect on which the customer has typed his name. In considering that request the Commission determined that customers of FCMs and IBs, as well as commodity pool participants and clients of CTAs, should be permitted to use electronic signatures in those instances where Commission rules require the customer's (or participant's or client's) manual signature. In furtherance of this determination, the Commission proposed defining the term ''electronic signature'' in new Rule 1.3(tt)[3] and authorizing the use of electronic signatures in new Rule 1.4.

The Proposing Release recounted in some detail various provisions of the Commission's rules that require registrants to obtain a signature,[4] and it noted that the actual steps taken to open an account (including the signing of the actual account agreement between a futures broker and its customer) are not directly covered by Commission rules.[5] Rather, as the Proposing Release explained, Commission rules address a number of ancillary aspects of the account opening process (including, for example, a signed acknowledgment of the receipt of a required disclosure). The Proposing Release also described efforts then pending in Congress and elsewhere to enact a legislative framework for the use of electronic and digital signatures in commercial and governmental transactions.[6]

B. The Commenters

The Commission received five comment letters in response to the Paperwork Release; two from futures industry trade organizations; one from a registered futures association; one from a registered FCM, and one from a corporate group including FCMs and CPOs. Although all of the commenters strongly agreed with the general intent of the rulemaking, each took issue with various aspects of the proposal.

II. Response to the Comments Received

A. General

All of the commenters supported the proposed rulemaking in concept. They saw the proposal as a worthy effort to keep pace with technological developments. Two commenters suggested that the Commission pare down the proposed rule to a definition and a general authorization to use electronic signatures. Another suggestion was to withdrawn the rulemaking and issue an advisory in its stead. As detailed below, the Commission has determined to adopt the proposed definition of the term ''electronic signature'' in Rule 1.3(tt)

[1] Commission rules referred to herein are found at 17 CFR Ch. I (1999).

[2] ''Use of Electronic Signatures by Customers, Participants,'' 64 FR 47151 (August 30, 1999). Readers may review the text of the Proposing Release in the **Federal Register** or at the Commission's Internet web site (http://www.cftc.gov).

[3] Rule 1.3 contains definitions of terms generally applicable under the Commission's rules.

[4] See 64 FR 47151 at 47152–47153.

[5] See 64 FR 47151 at 47152.

[6] Since the publication date of the Proposing Release, the United States Senate and the House of Representatives have each passed bills aimed in whole or in part at facilitating the use of electronic signatures. The Senate passed S. 761 November 19, 1999, and the House passed H.R. 1714 on November 9, 1999. H.R. 1714 has been received by the Senate and was referred to the Senate Committee on Commerce, Science and Transportation on November 19, 1999. Neither bill has been enacted into law.

essentially as proposed, and to adopt a streamlined version of proposed Rule 1.4.

B. Rule 1.3(tt)—Definition of Electronic Signature

The proposed definition tracked the definition used in the Uniform Electronic Transactions Act.[7] Four of the five commenters mentioned the proposed definition, and all of them endorsed it. Accordingly, the Commission is adopting Rule 1.3(tt) substantially as proposed.[8]

C. Rule 1.4—Use of Electronic Signatures

1. Proposed Paragraph (a)

As proposed, Rule 1.4(a) would have provided that, for purposes of Commission rules, an FCM, IB, COP or CTA could accept an electronic signature in lieu of a handwritten signature wherever Commission rules require that a document be signed by a customer, pool participant or advisory client, if the registrant elects generally to accept electronic signatures. The general permission to accept electronic signatures would been qualified by the caveat that an electronic signature must comply with applicable Federal law and any standards the Commission may adopt or guidance its staff may issue. It would have been further qualified by the requirement that registrants adopt and utilize reasonable safeguards, including at least safeguards to verify that an electronic signature is being used by the person it purports to identify, that the electronically-signed record will not be subsequently altered, and that no changes or errors occur in the electronic signature.

The commenters acknowledged the need for reasonable safeguards in connection with the use and processing of electronic signatures, but they expressed the belief that nature and specifies of the safeguards should be left up to the registrant and not spelled out in a rule. One commenter further stated that an express requirement that electronic signatures comply with applicable Federal law amounted to unnecessarily prescribing procedural safeguards.

After considering the comments, the Commission has determined not to adopt in Rule 1.4(a) the proposed requirements that the safeguards adopted and utilized by registrants must include measures to verify that the electronic signature is that of the person purporting to use it, and measures to detect changes or errors in a person's electronic signature. The rule as adopted retains, however, the proposed requirement to comply with applicable Federal law and includes a requirement to comply with other Commission rules.[9] The rule as adopted also retains a requirement for safeguards to prevent subsequent alteration of an electronically-signed record. The Commission believes that the reference to Federal law is an appropriate deferral to the end product of the pending efforts in Congress to produce legislation covering electronic signatures (and electronic commerce in general), as well as a signal to registrants that other statutory and regulatory provisions may affect the use of electronic signatures. Intact preservation of signed records (whether electronically or manually signed) is required by the recordkeeping requirements included in the Commission's rules.[10] Placing a paper document in a safe place is generally adequate to allow such authorized persons as Commission representatives to review the document at a later date as may be necessary. Electronic documents may require different measures to ensure that they can be retrieved and reviewed in the future. Thus, while the requirement to preserve and retain specified electronically-signed records is the same as for manually-signed documents, the manner in which registrants carry it out will vary—with the particular measures being left up to the registrant.

2. Proposed Paragraph (b)

Proposed Rule 1.4(b) would have required that registrants accepting electronic signatures from customers, pool participants or advisory clients clearly disclose to them that although an electronic signature is sufficient for purposes of the Commodity Exchange Act (the ''Act'')[11] and Commission rules, it may not be sufficient for purposes of other Federal or state laws or regulations. The commenters unanimously disapproved of this proposed requirement on a variety of grounds, including that it would cause confusion, that it would tend to distinguish manual and electronic signatures qualitatively, that the required disclosure would be subject to constant modification and varying legal interpretations, and that it would likely become moot in the foreseeable future.

After considering the comments, the Commission has determined to eliminate proposed paragraph (b) from Rule 1.4 as adopted. The provisions in Commission rules that require the signature of a customer, pool participant or advisory client generally do not involve the creation of contractual rights or liabilities. The validity of an electronic signature in the context of Commission rules is unlikely to become an issue except as between the Commission and the registrant because the signature generally does no more than confirm, in the event of a Commission audit or review of records, that the registrant has met its disclosure or other obligations under the rules. Accordingly, to accomplish its aim of alerting registrants and their clients to the legal concerns arising from the use of electronic signatures, by this **Federal Register** release the Commission is strongly urging registrants to exercise informed judgment in their decisions to accept electronic signatures (including, as appropriate, consulting legal counsel or performing their own legal research, as the case may be).

Thus, rule 1.4 as adopted consists of a single paragraph with no express requirement that registrants make disclosures relative to electronic signatures. Nevertheless, in the exercise of conscientious business practice, registrants are encouraged to provide information on the nature and significance of electronic signatures, and any legal or practical issues that may be relevant to the use of electronic signatures, by their customers, pool participants and advisory clients. Providing such information is consistent with the registrant's duties of diligent supervision as set forth in Commission rules (*e.g.,* Rule 166.3).

D. Comments Submitted in Response to Specific Questions in the Proposing Release

The Proposing Release contained a set of questions to elicit public comments on issues arising from and related to the use of electronic signatures. Each of the commenters addressed some or all of these questions.

In response to the question whether the Commission should defer rulemaking on electronic signatures to a later date, all of the commenters urged the Commission to act promptly to

[7] At its annual meeting held July 23–30, 1999, the National Conference of Commissioners of Uniform State Laws approved and recommended for adoption by all of the states the Uniform Electronic Transactions Act.

[8] In order for the definition of the term ''electronic signature'' in the rule to conform to the definition in the Uniform Electronic Transactions Act (as approved by the National Conference of Commissioners on Uniform State Laws), the language ''intent to sign the record'' is being substituted in the rule for the proposed language ''intent of signing the record.''

[9] In the proposed rule, the Commission had stated that the electronic signature ''must comply with . . . such standards as the Commission may adopt and such guidance as the Commission's staff may provide.''

[10] See, *e.g.,* Rules 1.31, 4.23 and 4.33.

[11] 7 U.S.C. § 1 *et seq.* (1994).

confirm registrants' authority to accept electronic signatures, rather than wait for final Congressional action. The Commission agrees that rulemaking in this area should not be delayed. Commenters did not believe that additional safeguards should be put in place to establish conclusively the identity of a user of an electronic signature or to counter any possible loss of security occasioned by switching from manual to electronic signatures. The commenters did not believe that face-to-face dealings or paper-based transactions were inherently more secure than electronic transactions, and they did not believe that electronic signatures should be treated as qualitatively different from handwritten signatures. They stated that Commission rules should be ''Medium-neutral'' with identical requirements applicable to paper-based and electronic dealings. The commenters generally saw no need for the imposition of a waiting period to replace the built-in delay that obtains when hard-copy account documents are delivered to a customer, read, signed and returned. The Commission nonetheless remains concerned that traditional high pressure, telephonic sales tactics, in combination with the ability to gain immediate customer approval to begin trading, may increase the pressure on the prospective customer. Industry participants should therefore exercise caution when permitting the use of electronic signatures as part of the solicitation process.

In denying a need for the Commission to adopt additional regulatory safeguards in this area, a view with which the Commission concurs, commenters expressed the belief that registrants will impose their own prudential controls, and that the nature and details of safeguards and protections should be left to the discretion of registrants exercising their supervisory procedures. Registrants are again reminded, however, that they have express obligations under Commission rules (*e.g.,* Rule 166.3) diligently to supervise the handling of all commodity interest accounts carried, operated, advised or introduced by the registrant.

Finally, commenters were split on the question whether the Commission should expressly require that the rules of self-regulatory organizations (''SROs'') be consistent with (proposed) Rules 1.3(tt) and 1.4. Some commenters expressed the view that although SROs should defer to the Commission's rules in this ares, there was adequate opportunity in the process by which the Commission reviews proposed SRO rules to ensure consistency without the Commission adopting an express provision in its own rules.[12] Other commenters urged the Commission to require SROs to conform their rules to those of the Commission. The Commission has determined not to adopt any requirement in this area in order to allow SROs to exercise flexibility.

III. Important Additional Considerations

The Commission reminds registrants that the adoption of Rule 1.4 affects the use of electronic signatures only in the context of complying with those Commission rules that require the signature of a customer, pool participant or client. Registrants remain subject, in their business activities generally, to other Federal and state laws and regulations. Congressional action on the use of electronic signatures has not been finalized, and the requirements for, and effect of, electronic signatures under state contract law remains far from uniform (notwithstanding recent submission to the states of the Uniform Electronic Transactions Act).

Accordingly, registrants should make their own inquiries, including consultation with counsel where appropriate, before accepting electronic signatures in situations (*e.g.,* for execution of account agreements by brokerage customers) that are not specifically addressed by Commission rules. In addition, registrants should make an informed judgment as to the information they should provide to prospective customers regarding the nature, use and effect of electronic signatures.

The Commission does not consider it likely that the rules adopted hereby will come into conflict with any law applicable to electronic signatures that may be enacted. Nevertheless, the Commission intends that its staff will monitor legislative developments in this area and that in the event staff identifies such a conflict, the Commission will undertake appropriate action.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA;''), 5 U.S.C. §§ 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[13] The Commission has previously determined that registered FCMs and CPOs are not small entities for the purpose of the RFA.[14] With respect to CTAs and IBs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs and IBs would be considered to be small entities and, if so, the economic impact on them of any rule.[15] In this regard, the Commission notes that the rules being adopted herein do not change the obligations of CTAs and IBs under the Act and Commission regulations, but permit CTAs and IBs to comply with certain existing obligations by using electronic means as an acceptable alternate to paper-based compliance. The Chairman, on behalf of the Commission hereby certifies, pursuant to 5 U.S.C. § 605(b), that these rules will not have a significant economic impact on a substantial number of small entities. No comments were received in response to the Commission's specific request for comments on the impact these rules as proposed would have on small entities.

V. Administrative Procedure Act

The Administrative Procedure Act (the ''APA'') generally requires that rules promulgated by an agency may not be made effective less than thirty days after publication, except for, among other things, instances where the agency has found good cause to make a rule effective sooner, and has published that finding together with the rule (5 U.S.C. 553). The Commission notes that many persons to whom the new rules would apply have indicated their eagerness to make use of them as soon as possible. The Commission generally attempts to respond to ongoing industry demands to implement technology in the marketplace as it becomes available and recognizes that existing technology supports to use of electronic signatures. Moreover, although these rules clarify that registrants may accept electronic signatures, they do not require any registrant to do so. Indeed, the existing rules remain unchanged. The Commission finds that these new rules facilitate a particular aspect of electronic commerce in a manner that does not impose any additional burdens on registrants or on their customers or

[12] We note that the Commission has proposed for public comment a rule change to permit futures exchanges to adopt changes to their rules without prior approval by the Commission. See ''Proposed Revision of the Commission's Procedure for the Review of Contract Market Rules,'' 64 FR 66428 (November 26, 1999). The comment period for that proposal closes February 24, 2000.

[13] 47 FR 189618–18621 (April 30, 1982).

[14] 47 FR 18619–18620.

[15] 47 FR 18618–18620.

clients. Accordingly, the Commission finds good cause to make these rules effective March 9, 2000, in accordance with 5 U.S.C. § 553(d)(3).

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, Section 1a, 4b, 4g and 8a, 7 U.S.C. §§ 1a, 6b, 6g and 12a (1994), the Commission hereby amends 17 CFR Part 1 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, 24.

2. Section 1.3 is hereby amended by adding new paragraph (tt) to read as follows:

§ 1.3 Definitions.

* * * * *

(tt) *Electronic signature* means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

3. Section 1.4 is hereby added immediately following § 1.3 to read as follows:

§ 1.4 Use of electronic signatures.

For purposes of complying with any provision in the Commodity Exchange Act or the rules or regulations in this Chapter I that requires a document to be signed by a customer of a futures commission merchant or introducing broker, a pool participant or a client of a commodity trading advisor, an electronic signature executed by the customer, participant or client will be sufficient, if the futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor elects generally to accept electronic signatures; *Provided, however,* That the electronic signature must comply with applicable Federal laws and other Commission rules; And, *Provided further,* That the futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor must adopt and utilize reasonable safeguards regarding the use of electronic signatures, including at a minimum safeguards employed to prevent alteration of the electronic record with which the electronic signature is associated, after such record has been electronically signed.

Issued in Washington D.C. March 3, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–5637 Filed 3–8–00; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–42488]

Delegation of Authority to the Office of the General Counsel

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to delegate to the General Counsel its authority to initiate proceedings under Section 21(e)(1) of the Securities Exchange Act of 1934 to enforce Commission orders, including Commission orders affirming self-regulatory organization sanctions, when the General Counsel determines such a proceeding is appropriate. This delegation would spare the Commissioners and their staff from having to review matters in which the Commission has already issued an order and which are noncontroversial and implicate no policy issues. The effect would be to allow the staff to bring proceedings more expeditiously and to promote efficiency in the enforcement of Commission orders.

EFFECTIVE DATE: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Melinda Hardy, Assistant General Counsel, (202) 942–0877.

SUPPLEMENTARY INFORMATION: Section 21(e)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') authorizes the Commission to apply to the district courts of the United States for orders commanding any person to comply with orders issued pursuant to the Exchange Act. Thus, Section 21(e)(1) authorizes the Commission to seek court orders requiring, among other things, payment of unpaid self-regulatory organization sanctions where the Commission has entered an order affirming that sanction. *See Lang* v. *French,* 154 F.3d 217, 222 (5th Cir. 1998).

The Commission is delegating to the General Counsel the authority to determine when to initiate actions under Section 21(e)(1) to enforce Commission-affirmed SRO sanctions and other sanctions because the decision to initiate such an action will rarely involve policy issues or be controversial. Actions under Section 21(e)(1) will necessarily follow a Commission order affirming or imposing a sanction, so Section 21(e)(1) actions will concern primarily the simple issue of whether a person has complied with the order. The staff may submit matters to the Commission for consideration as it deems appropriate.

The Commission finds, in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)), that this revision relates solely to agency organization, procedures, or practices. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for comment. Accordingly, it is effective March 9, 2000.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendment

For the reasons set out in the Preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–14 is amended by adding paragraph (l) to read as follows:

§ 200.30–14 Delegation of authority to the General Counsel.

* * * * *

(l) File applications in district court under Section 21(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(e)(1)) to obtain orders commanding persons to comply with Commission orders.

Dated: March 2, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5756 Filed 3–8–00; 8:45 am]

BILLING CODE 8010;–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 00—16]

RIN 1515–AC61

Extension of Import Restrictions Imposed on Certain Categories of Archaeological Material From the Prehispanic Cultures of the Republic of El Salvador

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the extension of the import restrictions on certain categories of archaeological material from the Prehispanic cultures of the Republic of El Salvador which were imposed by T.D. 95–20. The Under Secretary for Public Diplomacy and Public Affairs, United States Department of State has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, the restrictions will remain in effect for an additional 5 years, and the Customs Regulations are being amended to indicate this extension. These restrictions are being imposed pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. T.D. 95–20 contains the Designated List of archaeological material representing Prehispanic cultures of El Salvador.

EFFECTIVE DATE: March 8, 2000.

FOR FURTHER INFORMATION CONTACT: (Legal Aspects) Michael L. Smith, Intellectual Property Rights Branch (202) 927–1996; (Operational Aspects) Alfred Morawski, Other Government Agencies Branch (202) 927–0402.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of 1970 UNESCO Convention (codified into U.S. law as the ''Convention on Cultural Property Implementation Act'' (Public Law 97–446, 19 U.S.C. 2601 *et seq.*) (''the Act'')), the United States entered into a bilateral agreement with the Republic of El Salvador on March 8, 1995, concerning the imposition of import restrictions on certain categories of archeological material from the Prehispanic cultures of the Republic of El Salvador. The United States Customs Service issued T.D. 95–20 (March 10, 1995), amending § 12.104g(a) of the Customs Regulations (19 CFR 12.104g(a)) to reflect the imposition of these restrictions and including a list designating the types of article covered by the restrictions.

After reviewing the findings and recommendations of the Cultural Property Advisory Committee, the Under Secretary for Public Diplomacy and Public Affairs, United States Department of State, concluding that the cultural heritage of El Salvador continues to be in jeopardy from pillage of Prehispanic archaeological resources, made the necessary determinations to extend the import restrictions for an additional five years on February 14, 2000. Accordingly, Customs is amending § 12.104g(a) (19 CFR 12.104g(a)) to reflect the extension of the import restrictions.

The Designated List of Archaeological Material Representing Prehispanic Cultures of El Salvador covered by these import restrictions is set forth in T.D. 95–20. The Designated List and accompanying image database may also be found at the following internet website address: http://e.usia.gov/education/culprop.

The restrictions on the importation of these archaeological materials from the Republic of El Salvador are to continue in effect until March 8, 2005. Importation of such material continues to be restricted unless:

(1) Accompanied by appropriate export certification issued by the Government of the Republic of El Salvador or;

(2) With respect to Pre-Columbian material from archaeological sites throughout El Salvador, documentation exists that exportation from El Salvador occurred prior to March 10, 1995; or;

(3) With respect specifically to Pre-Columbian material from the Cara Sucia archaeological region, documentation exists that exportation from El Salvador occurred prior to September 7, 1987.

Regulatory Amendment

This document amends § 12.104g(a), Customs Regulations (19 CFR 12.104g(a)) extending the effective date for five years for the import restrictions on the archaeological material representing Prehispanic cultures of the Republic of El Salvador.

Inapplicability of Notice and Delayed Effective Date

This amendment is being made without notice or public procedure pursuant to 5 U.S.C. 553(a)(1). In addition, pursuant to 5 U.S.C. 553(b)(B), Customs has determined that such notice or public procedure would be impracticable and contrary to the public interest because the action being taken is essential to avoid interruption of the application of the existing import restrictions. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This amendment does not meet the criteria of a ''significant regulatory action'' as described in Executive Order 12866.

Drafting Information: The principal author of this document was Keith B. Rudich, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspections, Imports.

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority and specific authority citation for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for El Salvador by adding ''extended by T.D. 00–16''

immediately after ''T.D. 95–20'' in the column headed ''T.D. No.''.

Raymond W. Kelly,

Commissioner of Customs.

Approved: March 1, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–5811 Filed 3–6–00; 4:00 pm]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8819]

RIN 1545–AX14

Use of Actuarial Tables in Valuing Annuities, Interests for Life or Term of Years, and Remainder or Reversionary Interests; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction of final and temporary regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Friday, April 30, 1999 (64 FR 23187), relating to the use of actuarial tables in valuing annuities, interests for life or terms of years, and remainder or reversionary interests.

DATES: This correction is effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett at (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject of these corrections are under section 7520 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8819) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8819), which were the subject of FR Doc. 99–10533, is corrected as follows:

§ 1.664–2 [Corrected]

1. On page 23229, in the table in amendatory instruction Par. 32, the entry for 1.664–2(c) is corrected to read as follows:

Section	Remove	Add
* * *	* * *	*
1.664–2(c), sixth sentence	April 30, 1989	April 30, 1999.
* * *	* * *	*

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5245 Filed 3–8–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8852]

RIN 1545–AT52

Passthrough of Items of an S Corporation to its Shareholders; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Wednesday, December 22, 1999 (64 FR 71641), relating to the passthrough of items of an S corporation to its shareholders, the adjustments to the basis of stock of the shareholders, and the treatment of distributions by an S corporation.

DATES: This correction is effective December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Schaffer, Deane Burke, or David Shulman at (202) 622–3070, or Brenda Stewart at (202) 622–3120 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under sections 1366, 1367, and 1368 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8852) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8852), which were the subject of FR Doc. 99–32697, is corrected as follows:

§ 1.1366–4 [Corrected]

1. On page 71648, column 3, § 1.1366–4(c), third line from the bottom of the paragraph, the language, ''the amount of the tax as the amount of'' is corrected to read ''the amount of the tax as the net amount of''.

§ 1.1367–1 [Corrected]

2. On page 71649, column 2, § 1.1367–1(h) *Example 5.(i),* lines 7 through 11, the language, ''section 1377(a)(2)(B) and § 1.1377–1(b)(2), B and C are affected shareholders because B has transferred shares to Corporation S. Pursuant to section 1377(a)(2)(A) and § 1.1377–1(b)(1), B and C, the affected'' is corrected to read ''section 1377(a)(2)(B) and § 1.1377–1(b)(2), B, C, and D are affected shareholders because B has transferred shares to Corporations S and D. Pursuant to section 1377(a)(2)(A) and § 1.1377(b)(1), B, C, and D, the affected''.

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5244 Filed 3–8–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 184–0220a; FRL–6546–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving revisions to the California State Implementation Plan (SIP). The revisions concern rules from the San Diego County Air Pollution Control District. These rules were submitted by the State of California on behalf of the District to apply as general provisions for the implementation of NSR and other SIP requirements for stationary sources in the District.

This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of air pollutants in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on May 8, 2000, without further notice, unless EPA receives adverse comments by April 10, 2000. If EPA receives such comment, it will publish a timely withdrawal **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted in writing to David Albright at the Region IX mailing address listed below. Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours at the following address: Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

San Diego County Air Pollution Control District, 9150, Chesapeake Drive, San Diego, California 92123–1096

FOR FURTHER INFORMATION CONTACT: David Albright, Permits Office, AIR–3, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1627. Electronic mail: albright.david@epa.gov

SUPPLEMENTARY INFORMATION: Through out this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.

I. Applicability

The rules we are approving into the California SIP are SDCAPCD Rule 19.3—Emission Information and SDCAPCD Rule 60—Circumvention. The California Air Resources Board submitted SDCAPCD Rules 19.3 and 60 to us on October 18, 1996 and July 13, 1994, respectively.

II. Background

On November 15, 1990, Congress enacted the Clean Air Act Amendments of 1990. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(3)(B) of the CAA, Congress statutorily adopted the requirement that each State in which all or part of a marginal or worse ozone nonattainment area is located shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. San Diego County is classified as a serious ozone nonattainment area and SDCAPCD Rule 19.3 is intended to address this CAA section 182 requirement.

On October 21, 1977, we approved SDCAPCD Rule 60 into the California SIP (see 42 FR 56113). A revised version of Rule 60 was submitted for SIP approval on July 13, 1994 along with earlier versions of several SDCAPCD NSR rules that were the focus of a recent EPA rulemaking.[1] Revised Rule 60 is a companion administrative rule to the SDCAPCD NSR rules but was not included in our recent rulemaking package because Rule 60 was deemed by us to be segregable and fully approvable whereas the NSR rules contained certain deficiencies that resulted in a limited approval and limited disapproval. Today's action on Rule 60 does not have any effect on SDCAPCD Rules 20.1, 20.2, 20.3, and 20.4.

The State of California submitted many revised rules for incorporation into its SIP on July 13, 1994 and October 18, 1996, including the rules being acted on in this document. This document addresses EPA's direct final action for SDCAPCD Rule 19.3—Emission Information and SDCAPCD Rule 60—Circumvention. SDCAPCD adopted Rule 19.3 on May 15, 1996 and adopted Rule 60 on May 17, 1994. We determined Rule 19.3 to be complete on December 19, 1996 and Rule 60 to be complete on September 12, 1994, pursuant to EPA's completeness criteria as set forth in 40 CFR part 51, appendix V.

Rule 19.3 requires any person owning or operating any source of emissions to submit emission statement forms to the District in accordance with CAA 182(a)(3)(B). Rule 60 is intended to ensure that the definition of stationary source in SDCAPCD Rule 20.1 and the requirements of SDCAPCD's NSR Rules 20.1, 20.2, 20.3, and 20.4 are not circumvented by sources. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

There is currently no version of SDCAPCD Rule 19.3—Emission Information in the SIP. The submitted rule establishes requirements for any person owning or operating a source of emissions of air pollutants, or any person selling or supplying any material the use of which may cause the emission of air pollutants. Owners/operators of stationary sources which emit 25 tons per year or greater of volatile organic compounds or oxides of nitrogen are required to submit Emissions Statement Forms to the SDCAPCD annually. Owners/operators of sources emitting less than 5 tons per year of each air pollutant are not required to submit Emission Statement Forms. For sources emitting between 5 and 25 tons per year of volatile organic compounds or oxides of nitrogen and for persons selling or supplying any material, the use of which may cause the emission of air pollutants, Rule 19.3 requires the submission of Emission Statement Forms at the discretion of the San Diego County APCO.

Rule 19.3 was adopted by SDCAPCD and submitted for SIP approval to us in accordance with CAA section 182(a)(3)(B). Section 182(a)(3)(B) requires States to revise their SIP to include requirements for owners/operators of stationary sources of oxides

[1] On August 6, 1999, we proposed a limited approval and limited disapproval for the SDCAPCD NSR Rules 20.1, 20.2, 20.3, and 20.4 (see 64 FR 42892).

of nitrogen or volatile organic compounds to submit a statement showing the source's actual emissions of these pollutants.

On October 21, 1977, we approved into the SIP a version of Rule 60—Circumvention that had been adopted by SDCAPCD on November 8, 1976. Revisions to this rule were subsequently adopted on May 17, 1994, and submitted to us. The only significant change in SDCAPCD's submitted Rule 60 from the current SIP is an authorization for the District to aggregate emission units located or proposed to be located on the same or contiguous property and designate them as a single stationary source for purposes of SDCAPCD NSR Rules 20.1, 20.2, 20.3, and 20.4, provided the units are substantially related to each other and a potential intent to circumvent the NSR rules exists. Rule 60 describes several circumstances which, when present, create a potential intent to circumvent the requirements of Rules 20.1, 20.2, 20.3, and 20.4.

We evaluated the submitted rules and determined that they are consistent with the CAA, our regulations, and our policy. Therefore, SDCAPCD Rule 19.3—Emission Information and Rule 60—Circumvention are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. We have prepared a Technical Support Document (TSD) for this rulemaking which describes the requirements of Rules 19.3 and 60 and our evaluation of the rules. The TSD is available as described in the **ADDRESSES** section of this document.

We are publishing this direct final approval without prior proposal because we view this SIP revision as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This direct final approval will be effective May 8, 2000, without further notice unless we receive adverse comments by April 10, 2000.

If we receive such comments, then we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this direct final approval will be effective on May 8, 2000, and no further action will be taken on the proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, New source review, Nitrogen dioxide, Ozone, Permits, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: February 11, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Part 52.220 is being amended by adding paragraph (c)(198(i)(I)(*2*) and (c)(241)(i)(A)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(198) * * *

(i) * * *

(I) * * *

(*2*) Rule 60 adopted on May 17, 1994.

* * * * *

(241) * * *

(i) * * *

(A) * * *

(*4*) Rule 19.3 adopted on May 15, 1996.

* * * * *

[FR Doc. 00–5500 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT061–7220A; A–1–FRL–6542–3]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut and Rhode Island; Clean Fuel Fleets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final rulemaking action to approve both Connecticut's and Rhode Island's Clean Fuel Fleets Substitute Plan, incorporating them into the State Implementation Plan (SIP) under the Clean Air Act (CAA).

DATES: This direct final rule takes effect on May 8, 2000 without further notice, unless EPA receives adverse or critical comments by April 10, 2000. If EPA does receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You may mail comments to David B. Conroy, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, EPA Region 1, One Congress Street, Suite 1100 (CAA), Boston, MA 02114. You may also email comments to judge.robert@epa.gov.

You may review copies of the relevant documents to this action by appointment during normal business hours at the Office Ecosystem Protection, EPA Region 1, One Congress Street, Boston, Massachusetts. In addition, the information for each respective State is available at the Bureau of Air Management, Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, Connecticut 06106–1630; and the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge at 617–918–1045 or judge.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

This section is organized as follows:

What action is EPA taking today?

What are the Clean Fuel Fleets requirements?

How are Connecticut and Rhode Island meeting the Clean Fuel Fleets requirements?

Why is EPA approving Connecticut's and Rhode Island's Clean Fuel Fleets sutstitute Plan SIP revisions?

How does Clean Fuel Fleets affect air quality in Connecticut and Rhode Island?

What is the process for EPA's approval of this SIP revisions?

What Action Is EPA Taking Today?

The EPA is approving both Connecticut's and Rhode Island's Clean Fuel Fleets Substitute Plan submitted May 12, 1994 and October 5, 1994, respectively. We are approving these submittals into the Connecticut and Rhode Island SIPs as meeting the requirements of Section 182(c)(4) of the CAA.

What Are the Clean Fuel Fleets Requirements?

Section 246 of the CAA requires that serious or higher ozone nonattainment areas with populations of more than 250,000 adopt a Clean Fuel Fleets program (CFFP). Both ozone nonattainment areas in Connecticut meet that criterion: the Connecticut portion of the New York-Northern New Jersey-Long Island severe nonattainment area and the Greater Connecticut serious nonattainment area. (See 40 CFR 81.307.) Also, the Rhode Island ozone nonattainment area met that criterion at the time of submittal. (See 40 CFR 81.340.) Since that time, EPA has revoked the one-hour ozone standard for Rhode Island (64 FR 30911). On October 25, 1999 (64 FR 57424), EPA proposed that standard should apply again. In the event that EPA reimposes the one-hour ozone standard in Rhode Island, once again triggering the CFFP mandate, this approval action will ensure that Rhode Island meets the requirement for a CFFP.

Section 182(c)(4)(A) of the CAA requires States with serious ozone nonattainment areas to submit for EPA approval a SIP revision that includes measures to implement the CFFP. Section 182(d) requires the same of severe ozone nonattainment areas. Under this program, a certain specified percentage of vehicles purchased by fleet operators for covered fleets must meet emission standards that are more stringent than those that apply to conventional vehicles.

Alternatively, Section 182(c)(4)(B) of the CAA allows States to ''opt out'' of the CFFP by submitting a program or programs that will result in at least equivalent long term reductions in ozone-producing and toxic air emissions as achieved by the CFFP. The CAA directs EPA to approve a substitute program if it achieves long term reductions in emissions of ozone producing and toxic air pollutants equivalent to those that would have been achieved by the CFFP or the portion of the CFFP for which the measure is to be substituted.

How Are Connecticut and Rhode Island Meeting the Clean Fuel Fleets Requirements?

Connecticut has decided to opt out of the CFFP. Connecticut's substitute plan relies on the implementation of its reformulated gasoline (RFG) program and the enhanced inspection and maintenance (I/M) program in areas in Connecticut where these programs are not required explicitly by the CAA. Since Connecticut is implementing both programs statewide, an additional 87 towns will use RFG and 40 towns will have enhanced I/M beyond what would be required by the CAA. The resulting reductions of ozone-producing emissions meet or exceed the emissions reductions that would have occurred if the CFFP were implemented. Yet only those emissions reductions needed to meet CFFP targets are being approved herein. Specifically, Connecticut's Clean Fuel Fleets Substitute Plan will result in 0.1 tons per day (tpd) of ozone-producing chemicals (total reduction of volatile organic compounds (VOC) and nitrogen oxides combined) in 2000 and 0.4 tpd in 2015 in the severe area and 0.4 tpd in 2000 and 1.2 tpd in the serious area.

Rhode Island has also decided to opt out of the CFFP. Rhode Island's substitute plan relies on the implementation of its reformulated gasoline (RFG) program, which is required statewide. The resulting reductions of ozone-producing emissions meet or exceed the emissions reductions that would have occurred if the CFFP were implemented. Yet, only those emissions reductions needed to meet CFFP targets are being approved herein. Specifically, Rhode Island's Clean Fuel Fleets Substitute Plan will result in 0.119 tpd of ozone-producing chemicals (total VOC and nitrogen oxides) in 2000 and 0.487 tpd in 2015.

The emission reductions for Connecticut's implementation of enhanced I/M and RFG, and Rhode Island's implementation of RFG greatly exceed the reductions that could have been achieved with the CFFP. In the case of Connecticut, enhanced I/M and RFG were explicitly required by the Act in much of the State. But in other parts of the State, and for RFG in Rhode Island, the programs are being implemented in areas not specifically mandated by the Act. These programs can be counted for the purposes of CFFP substitution and they are needed for meeting CAA rate of progress and air quality goals. In Connecticut, the substitute measures achieve 0.7 tons per day (tpd) of ozone-producing chemicals, or VOC, in this case, in 2000 and 0.4 tpd in 2015 in the severe area. Further, the substitute measures achieve 17.1 tpd in 2000 and 7.8 tpd in the Connecticut serious area beyond the levels explicitly mandated by the Act. In Rhode Island, the substitute measure (RFG) achieves approximately 7 tons per day (tpd) of ozone-producing chemicals (VOC) in 2000 and a comparable reduction in 2015. Again, in all cases, only those emissions reductions needed to meet CFFP targets are being approved herein. Finally, since reductions in toxic air emissions are proportional to the reductions in VOC, any substitute plan which reduces VOCs will also reduce toxic air emissions in the same proportion. Therefore, both Connecticut and Rhode Island's substitute plans will meet substitute CFFP requirement for air toxics.

Why Is EPA Approving Connecticut's and Rhode Island's Clean Fuel Fleets Substitute Plan SIP Revisions?

EPA is approving Connecticut's and Rhode Island's Clean Fuel Fleets Substitute Plan SIP revision because each State has successfully demonstrated that it has achieved long term reductions in emissions of ozone producing and toxic air pollutants equivalent to those that would have been achieved by the CFFP. Both Connecticut's and Rhode Island's emission reduction calculations follow EPA guidance. Further information on both Connecticut's and Rhode Island's Clean Fuel Fleets Substitute Plan SIP revision and EPA's evaluation of these SIP revisions can be found in a memorandum entitled ''Technical Support Document—Clean Fuel Fleets, Connecticut and Rhode Island.'' Copies of this document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

How Does Clean Fuel Fleets Affect Air Quality in Connecticut and Rhode Island?

EPA's approval of both Connecticut's and Rhode Island's Clean Fuel Fleets Substitute Plan will have a positive benefit on air quality in both Connecticut and Rhode Island. The emission reductions which Connecticut and Rhode Island are using to offset a CFFP will be permanent and will not be available for emissions trading.

What Is the Process for EPA's Approval of This SIP Revision?

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is also publishing a separate document that will serve as the proposal to approve this SIP revision should we receive relevant adverse. This action will be effective May 8, 2000 without further notice unless we receive relevant adverse comments by April 10, 2000.

If EPA does receive adverse comments, we will withdraw the direct final rule and publish a document stating that the rule will not take effect. We will then respond to all public comments received in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. If you are interested in commenting on this action, you should do so at this time. If no such comments are received, you should know that this rule will be effective on May 8, 2000 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state laws as meeting federal requirements and imposes no additional requirements beyond those imposed by those state laws. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7,

1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment on the proposed rule rather than filing a petition for review in the Court of Appeals.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 14, 2000.

Mindy S. Lubber,

Acting Regional Administrator, EPA—New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(81) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(81) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on May 12, 1994.

(i) Incorporation by reference.

(A) ''Clean Fuel Fleet Substitute Plan,'' prepared by the Connecticut Department of Environmental Protection, dated May 12, 1994.

(ii) Additional materials.

(A) Letter from the Connecticut Department of Environmental Protection dated May 12, 1994 submitting a revision to the Connecticut State Implementation Plan.

Subpart OO—Rhode Island

3. In § 52.2070 the table in paragraph (e) is amended by adding a new state citation to the end of the table to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(e) * * *

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
*	*	*	*	*
Letter from RI DEM submitting revision for Clean Fuel Fleet Substitution Plan.	Providence (all of Rhode Island) nonattainment area.	October 5, 1994	March 9, 2000 [Insert FR citation from published date].	

[FR Doc. 00–5200 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–054–7213A; A–1–FRL–6545–9]

Approval and Promulgation of Air Quality Implementation Plan; Connecticut, New Hampshire, and Rhode Island; Approval of National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve State Implementation Plan (SIP) revisions submitted individually by the States of Connecticut, New Hampshire and Rhode Island, committing that each State will accept compliance with the National Low Emission Vehicle (National LEV) program requirements as a compliance option for new motor vehicles sold in the State. Connecticut submitted its SIP revision on February 7, 1996 and February 18, 1999. EPA proposed approval of this submittal in a direct final rulemaking action on August 16, 1999 (64 FR 44450), and received

adverse comments. Rhode Island's submittal was made on February 22, 1999 and November 17, 1999. New Hampshire's National LEV submittal was made on August 16, 1999. EPA proposed approval of New Hampshire's and Rhode Island's SIPs on December 22, 1999 (64 FR 71705). EPA received no comments on that proposal. In this action, EPA is responding to the comments received on Connecticut's National LEV SIP commitment, and is approving the National LEV SIP commitments for Connecticut, New Hampshire and Rhode Island.

DATES: This rule is effective on May 8, 2000.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA. In addition, the information for each respective State is available at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630; the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095; and the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

SUPPLEMENTARY INFORMATION:

I. Background

On January 7, 1998, (63 FR 926) the Environmental Protection Agency (EPA) published a final rule outlining a voluntary nationwide clean car program, designed to reduce smog and other pollution from new motor vehicles. The National LEV regulations allow auto manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that are more stringent than EPA can mandate. The regulations provided that the program would come into effect only if northeastern States and the auto manufacturers voluntarily signed up for it. On March 9, 1998 (63 FR 11374), EPA found that nine northeastern States and 23 manufacturers had opted into the National LEV program and that the program is in effect. Now that it is in effect, National LEV is enforceable in the same manner as any other federal new motor vehicle program. National LEV will achieve significant air pollution reductions nationwide. A more complete description of the National LEV program was included in the proposed rulemaking actions, and will not be restated here.

EPA is taking a final action to approve State Implementation Plan (SIP) revisions submitted individually by the States of Connecticut, New Hampshire and Rhode Island, committing that each State will accept automaker's compliance with National LEV program requirements as a compliance option for new motor vehicles sold in the State. Further, for Connecticut and Rhode Island, we are approving the States' backstop California low emission vehicle programs that would apply to any manufacturers not complying with National LEV. Connecticut submitted its SIP revision on February 7, 1996 and February 18, 1999. EPA proposed approval of this submittal in a direct final rulemaking action on August 16, 1999 (64 FR 44411, 64 FR 44450). EPA subsequently withdrew this action on November 12, 1999 (64 FR 61522) because adverse comments were submitted. Rhode Island's submittal was made on February 22, 1999 and November 17, 1999. New Hampshire's National LEV submittal was made on August 16, 1999. EPA proposed approval of New Hampshire's and Rhode Island's SIPs on December 22, 1999 (64 FR 71705). EPA received no comments on that proposal. Below, EPA is responding to the comments received on Connecticut's National LEV SIP commitment, and is approving the National LEV SIP commitments for Connecticut, New Hampshire and Rhode Island.

Response to Comments: On September 15, 1999, the American Canoe Association, Inc. (ACA), submitted adverse comments on the proposed SIP revision for the Connecticut commitment to accept National LEV. EPA took action to ensure that the Connecticut National LEV SIP commitment was not made part of the SIP by withdrawing that direct final rulemaking in the **Federal Register** (64 FR 61522). EPA stated that it would respond to the comments received and make a final determination on approval of the Connecticut National LEV SIP commitment in the future. As outlined below, some of these issues were addressed and resolved under the National LEV rulemaking, and EPA did not reopen these issues for reconsideration in proposing to approve the Connecticut National LEV SIP commitment.

1. ACA Comment: The proposed SIP revision will result in increased auto emissions in Connecticut which will adversely affect Connecticut residents as well as residents in downwind States. This is based on ACA's observation that average emission standards for both passenger cars and light duty trucks for at least 1999 and 2000 model years for NMOG are lower under the CA LEV program than the National LEV program, and their assertion that air quality would suffer in Connecticut and in downwind states such as Rhode Island and Massachusetts because of this action.

Response: As an initial matter, EPA found in the National LEV rulemaking that National LEV would produce NO_X and VOC emission reductions equivalent to or greater than those from State by State adoption of California LEV throughout the Northeast Ozone Transport Region (63 FR 930). Connecticut's SIP commitment to National LEV is necessary to ensure that the National LEV program remains in effect and continues to produce emission reductions and associated air quality benefits. Thus, EPA disagrees with ACA's assertion regarding air quality benefits (see 63 FR 930–931 and Summary and Analysis of Comments, National Low Emission Vehicle Program, December 12, 1997 for further discussion).

Moreover, when the State of Connecticut originally submitted the California LEV program to EPA in 1996, it stated that it preferred the National LEV program, and asked that EPA not act to approve the California program until issues regarding National LEV were resolved. When the State ultimately submitted its SIP commitment to accept National LEV for approval, the State made clear it intended EPA to approve Connecticut's commitment to National LEV in the SIP with the California LEV program as a backstop program, which would only apply if an automaker were no longer to subject to National LEV. Comparisons between California LEV and National LEV are not relevant for the purposes of this approval because EPA is acting on the SIP revision request that is before EPA. The SIP revision meets all Clean Air Act requirements and will strengthen the existing State Implementation Plan, resulting in federally enforceable emission reductions. ACA's opinion that another measure could have been utilized by the State and would result in more pollution reductions is not relevant to EPA's determination of whether to approve the State's submission under section 110(k) of the Clean Air Act. EPA is approving the State's request.

Further, on June 25, 1998, Connecticut held a public hearing on the SIP submittal to commit to National

LEV. This hearing sought public input on the State's proposal to finalize its commitment to National LEV, and its plan to allow National LEV to be a compliance alternative to the States' California LEV program. No parties submitted adverse comments at that hearing. Thus, on February 18, 1999, Connecticut requested approval of the National LEV program, with the State's previously adopted California LEV program as a backstop.

2. ACA Comment: NLEV is illegal under the Clean Air Act. ACA contends that NLEV is illegal because EPA does not have the authority to amend the current Tier 1 standards until at least 2004. ACA further contends that NLEV is illegal because it requires EPA to illegally surrender discretion over EPA's regulatory responsibilities. Finally, ACA contends that NLEV is illegal because EPA has no authority to decide whether a State may exercise its rights under section 177 of the Clean Air Act.

Response: These issues were raised and resolved in the final National LEV rule (See 62 FR 31202–31208; 31221–31223, June 6, 1997; 63 FR 935–945, 956, January 7, 1998; Summary and Analysis of Comments, National Low Emission Vehicle Program, May 1, 1997, 27–35, 71–74; Summary and Analysis of Comments, National Low Emission Vehicle Program, December 12, 1997, 21–24). Thus, all three of these issues relating to the legality of the National LEV program were closed upon promulgation of the final National LEV rule. EPA did not reopen in its proposed SIP approval rulemaking any issues related to the legality of the underlying federal program that States are committing to accept. Thus, these issues relating to the legality of the National LEV program were already closed for purposes of this SIP approval.

3. ACA Comment: The Clean Air Act does not allow a State to use, or EPA to approve, a ''compliance alternative'' in a State that has adopted California's emission standards. ACA argues that section 177 is clear that no third set of vehicle emission standards is permitted. The standards that can be adopted are either CA LEV programs under section 177, or the federal emission standards.

Response: EPA also resolved in the final National LEV rule the issue of whether States may accept compliance with the National LEV program in lieu of compliance with State section 177 programs, and whether EPA may approve SIP revisions committing to accept National LEV in this way. EPA did not reopen this issue in this rulemaking by proposing to approve SIP revisions committing to accept National LEV as a compliance alternative.

The entire National LEV program is premised on the concept that it will provide motor vehicle manufacturers an alternative to compliance with State section 177 programs in States that opt into the National LEV program. Moreover, the National LEV regulations provide detailed requirements that States must meet to opt into National LEV, including language for SIP revisions committing the State to accept compliance with the program. 40 CFR 86.1705–99(e). These provisions of the National LEV rule were premised on EPA's interpretation that neither section 177 nor section 209 bar a State from exempting motor vehicles from compliance with a State section 177 program if those vehicles complied with federal standards. The provisions were also premised on EPA's interpretation that sections 177 and 209 also do not bar EPA approval of a SIP committing the State to accept such compliance with federal standards. It was clear that sections 177 and 209 would bar a State from adopting the National LEV standards itself and requiring motor vehicle manufacturers to comply with such standards. However, EPA believed that sections 177 and 209 would in no way prevent a State from committing that it would not apply its section 177 requirements to motor vehicle manufacturers that chose to comply with a specified federal regulatory program. This interpretation distinguished between a State adopting new motor vehicle requirements that apply to manufacturers and are different from California's program, and a State providing that its State requirements under section 177 will not apply to manufacturers, as long as they comply with federal requirements. EPA promulgated the National LEV regulations based on this interpretation. Moreover, EPA did not reopen for consideration this fundamental legal interpretation, which supports the validity of the entire structure of the National LEV program, in this direct final rulemaking to approve Connecticut's SIP revision. EPA explained in the preamble to the National LEV final rule that EPA would be able to approve a SIP submission containing the specified language even without further notice-and-comment rulemaking. Here EPA chose to conduct notice-and-comment rulemaking to address any other possible issues regarding the approvability of Connecticut's submission under section 110 of the CAA. 63 FR 935–939. EPA did not reopen the compliance alternative issue in this rulemaking.

Final Action: EPA has evaluated the SIP revisions submitted by Connecticut, New Hampshire, and Rhode Island and has determined that each is consistent with the EPA National LEV regulations and meet the section 110 requirements for SIP approvals. Therefore, EPA is approving the Connecticut SIP revision submitted on February 7, 1996 and February 18, 1999; Rhode Island's SIP revision submitted on February 22, 1999 and November 17, 1999; and New Hampshire's SIP revision submitted on August 16, 1999, which commit each State to the National LEV program.

Nothing in this action should be construed as permitting or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state laws as meeting federal requirements and imposes no additional requirements beyond those imposed by those state laws. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule allowing entities to comply with a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean

Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: February 17, 2000.

Mindy S. Lubber,

Acting Regional Administrator, Region I.

PART 52—[AMENDED]

40 CFR part 52 is amended as follows:

1. The authority citation for part 52 continues to read as follows:

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

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(79) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(79) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on February 7, 1996 and February 18, 1999.

(i) Incorporation by reference.

(A) Connecticut regulation section 22a–174–36, entitled ''Low Emission Vehicles'' as dated and effective by determination of the Secretary of State on December 23, 1994.

(B) Connecticut regulation section 22a–174–36(g), entitled ''Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program'' as dated and effective by determination of the Secretary of State on January 29, 1999.

(ii) Additional material.

(A) Letter from the Connecticut Department of Environmental Protection dated February 7, 1996 submitting a revision to the Connecticut State Implementation Plan for the Low Emission Vehicle program.

(B) Letter from the Connecticut Department of Environmental Protection dated February 18, 1999 submitting a revision to the Connecticut State Implementation Plan for the National Low Emission Vehicle program to be a compliance option under the State's Low Emission Vehicle Program.

3. In § 52.385, Table 52.385 is amended by adding new entries for section 22a–174–36, entitled ''Low Emission Vehicles'' and section 22a–174–36(g), entitled ''Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program'' to read as follows:

§ 52.385 - EPA—approved Connecticut Regulations

* * * * *

TABLE 52.385.—EPA-APPROVED RULES AND REGULATIONS

Connecticut State citation	Title/subject	Dates		Federal Register citation	52.370	Comments/description
		Date adopted by State	Date approved by EPA			
*	*	*	*	*	*	*
22a–174–36	Low Emission Vehicles	12/23/94	3/9/00	[Insert FR citation from published date].	(c)(79)	Approval of Low Emission Vehicle Program.
22a–174–36(g)	Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program.	1/29/99	3/9/00	[Insert FR citation from published date].	(c)(79)	Approval of Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program for the ''California'' low emission vehicle program adopted above.
*	*	*	*	*	*	*

Subpart EE—New Hampshire

4. Section 52.1520 is amended by adding paragraph (c)(65) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(65) Revisions to the State Implementation Plan submitted by the New Hampshire Department of Environmental Services on August 16, 1999.

(i) Incorporation by reference.

New Hampshire regulation Chapter Env-A 3600, entitled ''National Low Emission Vehicle (National LEV) Program'' adopted July 21, 1999.

(ii) Additional material.

Letter from the New Hampshire Department of Environmental Services dated August 16, 1999 submitting the Low Emission Vehicle program as a revision to the State Implementation Plan.

5. In § 52.1525, Table 52.1525 is amended by adding new entries to existing state citations for Chapter Env-A 3600, entitled ''National Low Emission Vehicle (National LEV) Program'' to read as follows:

§ 52.1525—EPA-approved New Hampshire state regulations

* * * * *

TABLE 52.1525.—EPA-APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Comments
*	*	*	*	*	*	*
National Low Emission Vehicle Program.	CH air 3600	7/21/99		[Insert FR citation from published date].	(c)(65)	Approval of commitment to National Low Emission Vehicle Program.
*	*	*	*	*	*	*

Subpart OO—Rhode Island

§ 52.2070 Identification of plan.

6. In § 52.2070 the Table in paragraph (c) is amended by adding new state citations for Regulation Number 37, entitled ''Rhode Island's Low Emission Vehicle Program'' and in the Table in paragraph (e) by adding a new entry at the end of the Table in the non-regulatory SIP provision to read as follows:

(c) EPA approved regulations.

EPA APPROVED RHODE ISLAND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
* *	*	*	*	* *
Air Pollution Control Regulation 37.	Rhode Island's Low Emission Vehicle Program.	12/7/99	[Insert FR citation from published date].	Includes National LEV as a compliance alternative.

(d) * * *

(e) Nonregulatory.

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
* *	*	*	*	* *
Letter outlining commitment to National LEV.	Statewide	2/22/99	[Insert FR citation from published date].	Includes details of the State's commitment to National LEV.

[FR Doc. 00–5630 Filed 3–9–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE046–1022a; FRL–6547–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Regulation Number 37—NO_X Budget Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final rule to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision implements Phase II of the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) which describes a regional nitrogen oxides (NO_X) cap and trade program that will significantly reduce NO_X emissions generated within the ozone transport region. The intended effect of this action is to approve the Delaware Regulation Number 37, NO_X Budget Program.

DATES: This rule is effective on May 8, 2000, without further notice, unless EPA receives adverse written comment by April 10, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Delaware Department of Natural Resources & Environmental Control, Richardson & Robins Building, 89 Kings Highway, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at quinto.rose@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On December 20, 1999, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of Delaware Regulation Number 37, NO_X Budget Program.

I. Background

The Ozone Transport Commission (OTC) adopted a Memorandum of Understanding (MOU) on September 27, 1994, committing the signatory states to the development of a two phase region-wide reduction in NO_X emissions by 1999 and by 2003, respectively. As reasonably available control technology (RACT) to reduce NO_X emissions was required to be implemented by May of 1995, the MOU refers to the NO_X reductions to be achieved by 1999 as Phase II; and the NO_X reductions to be achieved by 2003 as Phase III. The OTC states include Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, the northern counties of Virginia, and the District of Columbia. All OTC member states and the District of Colombia, with the exception of the Commonwealth of Virginia, signed the September 27, 1994 MOU. The OTC MOU requires reductions of NO_X emissions, during the ozone season, from utility and large industrial combustion facilities within the Ozone Transport Region (OTR) in order to further the effort to achieve the health-based National Ambient Air Quality Standard (NAAQS) for ozone.

In the MOU, the OTC states agreed to propose regulations for the control of NO_X emissions in accordance with the following guidelines:

1. The level of NO_X required would be established from a 1990 baseline emissions level.

2. The reduction would vary by location, or zone, and would be implemented in two phases utilizing a region wide trading program.

3. The reduction would be determined based on the less stringent of each of the following:

a. By May 1, 1999, the affected facilities in the inner zone shall reduce their rate of NO_X emissions by 65% from baseline, or emit NO_X at a rate no greater than 0.20 pound per million Btu. (This is referred to as a Phase II requirement).

b. By May 1, 1999, the affected facilities in the outer zone shall reduce their rate of NO_X emissions by 55% from baseline, or shall emit NO_X at a rate no greater than 0.20 pounds per million Btu. (This is referred to as a Phase II requirement).

c. By May 1, 2003, the affected facilities in the inner and outer zone shall reduce their rate of NO_X emissions by 75% from baseline, or shall emit NO_X at a rate of no greater than 0.15 pounds per million Btu. (This is referred to as a Phase III requirement).

d. By May 1, 2003, the affected facilities in the Northern zone shall reduce their rate of NO_X emissions by 55% from baseline, or shall emit NOx at a rate no greater than 0.20 pounds per million Btu. (This is referred to as a Phase III requirement).

A task force of representatives from the OTC states, organized through the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA), were charged with the task of developing a model rule to implement the program defined by the OTC MOU. During 1995 and 1996, the NESCAUM/MARAMA NO_X Budget Task Force worked with EPA and developed a model rule as a template for OTC states to adopt their own rules to implement the OTC MOU. The model rule was issued May 1, 1996. The model rule was developed for the OTC states to implement the Phase II reduction called for in the MOU to be achieved by May 1, 1999. The model rule does not include the implementation of Phase III.

II. Summary of SIP Revision

Delaware's Regulation Number 37 is based solely and completely upon the ''NESCAUM/MARAMA NO_X Budget Rule'' issued in May 1, 1996. The model rule was developed by the states in the Ozone Transport Region (OTR) using the EPA's economic incentive rules (67 FR 16690) which were published on April 7, 1994, as the general regulatory framework.

The Delaware NO_X Budget Program establishes NO_X emission allowances for each ozone season which falls between May 1, 1999 and September 30, 2002. This program identifies the budgeted sources and identifies the number of allowances each budgeted source is allocated.

The Delaware NO_X Budget Program is divided into twenty sections: (1) General Provisions—purpose and scope of the program; (2) Applicability—any owner or operator of a budget source where the source is located in the State of Delaware; (3) Definitions—defines terms used in the program; (4) Allowance Allocation—the total number of NO_X allowances (tons) which Delaware has been allotted from the regional program to divide among the sources subject to the program during the 1999–2002 ozone seasons; (5) Permits—requirements for revisions and amendments; (6) Establishment of Compliance Accounts; (7) Establishment of General Accounts; (8) Opt-in

Provisions; (9) New Budget Source Provisions; (10) NO_X Allowance Tracking System (NATS); (11) Allowance Transfer—requirements and procedures to notify the NATS Administrator; (12) Allowance Banking—procedures and limitations for banking unused allowances from one year to another; (13) Emission Monitoring—monitored by either a continuous emission monitoring system (CEMS) or equivalent that is approved by the state and EPA; (14) Recordkeeping—records to be retained for a minimum of five years; (15) Emissions Reporting—quarterly in an electronic format (EDR); (16) End-of-Season Reconciliation—how compliance will be determined at the end of each ozone season; (17) Compliance Certification—annual compliance certification requirements for budget units; (18) Failure to Meet Compliance Requirements; (19) Program Audit; and (20) Program Fees. Two appendices are included in this regulation: Appendix A—where budgeted sources and their NO_X allowance allocations are identified; and Appendix B—final OTC NO_X baseline inventory of the budgeted sources.

EPA is publishing this direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on May 8, 2000, without further notice unless EPA receives adverse comment by April 10, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. A more detailed description of the state submittal, the model rule and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. Interested parties may request a copy of this TSD from the EPA Regional Office listed in the **ADDRESSES** section of this document.

III. Final Action

EPA is approving Delaware's December 20, 1999 request to revise its SIP to include Regulation Number 37, NO_X Budget Program.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget (OMB). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 2000. Filing a petition for reconsideration by the Administrator of this final rule approving Delaware's Regulation Number 37—NO_X Budget Program, does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: February 24, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart I—Delaware

2. In section 52.420, the entry for Regulation 37 in the ''EPA Approved Regulations in the Delaware SIP'' table in paragraph (c) is revised to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/Subject	State effective date	EPA approval date	Additional information
*	*	*	*	*
Regulation 37		NO_X Budget Program		
Section 1	General Provisions	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 2	Applicability	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 3	Definitions	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 4	Allowance Allocation	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 5	Permits	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 6	Establishment of Compliance Accounts	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 7	Establishment of General Accounts	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 8	Opt In Provisions	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 9	New Budget Source Provisions	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 10	NO_X Allowance Tracking System (NATS)	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 11	Allowance Transfer	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 12	Allowance Banking	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 13	Emission Monitoring	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 14	Recordkeeping	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 15	Emissions Reporting	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 16	End-of-Season Reconciliation	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 17	Compliance Certification	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 18	Failure to Meet Compliance Requirements	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 19	Program Audit	12/11/99	3/9/00	[Insert *Federal Register* cite].
Section 20	Program Fees	12/11/99	3/9/00	[Insert *Federal Register* cite].
Appendix A	NO_X Budget Program—Budget Sources & Allowances.	12/11/99	3/9/00	[Insert *Federal Register* cite].
Appendix B	NO_X Budget Program—Final OTC NO_X Base-line Inventory.	12/11/99	3/9/00	[Insert *Federal Register* cite].
*	*	*	*	*

[FR Doc. 00–5614 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[CC Docket No. 99–168; DA 00–450]

Service Rules for the 746–764 and 776–794 MHz Bands; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects two errors that were contained in a document published in the January 20, 2000, **Federal Register**, establishing service rules governing the initial assignment of license, by competitive bidding, and the subsequent regulatory treatment of commercial services to be provided on the 746–764 and 776–794 MHz Bands.

DATES: Effective on March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Jane Phillips, 202–418–1310.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a synopsis of the First Report and Order (synopsis) (FR Doc. 00–1332) in the **Federal Register** of January 20, 2000, (65 FR 3139) establishing service rules governing the initial assignment of license, by competitive bidding, and the subsequent regulatory treatment of commercial services to be provided on the 746–764 and 776–794 MHz Bands. Both in the text of the synopsis and in § 27.13(b) of the Commission's implementing regulation, the specific date as of which a license issued for the 747–762 MHz and 777–792 MHz bands will terminate was erroneously identified as January 1, 2014. The correct date is January 1, 2015. Additionally, in § 27.66(b), the date as of which a fixed service common carrier's application for voluntary discontinuance, reduction, or impairment of service will be automatically granted, absent opposition, is amended from ''30'' to ''31'' days.

Correction of Publication

In rule FR Doc. 00–1332, 65 FR 3139, January 20, 2000, make the following corrections. In the text of the supplementary information wherever the date January 1, 2014, appears, correct it to read January 1, 2015. On page 3146, in the second column, § 27.13 (b) is amended by correcting ''January 1, 2014,'' to ''January 1, 2015.'' Additionally, on page 3149, in the second column, § 27.66(b) is amended by correcting ''30 days'' to read ''31 days.''

Dated: March 3, 2000.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5678 Filed 3–8–00; 8:45 am]

BILLING CODE 6712–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1806, 1808, 1811, 1813, 1815, 1825, 1835, 1837, 1842, 1848, and 1851

Miscellaneous Administrative Revisions to the NASA FAR Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule to conform the NASA FAR Supplement (NFS) with the Federal Acquisition Regulation (FAR); indicate the method of voluntary consensus standard reporting utilized by NASA; clarify that when using NASA's structured approach for determining profit or fee objectives, values outside the designated ranges must not be used; adds NASA's policy regarding payment of profit or fee under letter contracts which was mistakenly removed; and make editorial corrections and miscellaneous changes dealing with NASA internal and administrative matters.

EFFECTIVE DATE: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, (202) 358–1645, e-mail: *celeste.dalton@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

FAC 97–14, dated September 24, 1999, amended FAR 11.107 to indicate that agencies will describe the reporting method of voluntary consensus standards used. This final rule states that NASA's method of reporting is categorical. This final rule also revises numbering within NFS Part 1848 to reflect the FAC 97–14 changes to FAR 48.104. Changes unrelated to FAC 97–14 are made to: Allow deputy procurement officers to designate cardholders for commercial purchase cards; clarify that when using NASA's structured approach for determining profit or fee objectives, values outside the designated ranges must not be used; and to require submission of hardcopies of RFPs for Headquarters review. The change to NASA's structured approach for developing a profit or fee objective (64 FR 51472–51476, September 23, 1999) mistakenly deleted NASA's policy regarding payment of profit or fee under letter contracts. This final rule corrects this error by adding the previous language as section 1815.404–472. Other editorial changes are made to: Correct referenced document titles; Correct referenced FAR citations; delete expired documents; and remove section 1851.101 as a result of an expired document.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subparts in 48 CFR Parts 1806, 1808, 1811, 1813, 1815, 1825, 1835, 1837, 1842, 1848, and 1851

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1806, 1808, 1811, 1813, 1815, 1825, 1835, 1837, 1842, 1848, and 1851 are amended as follows:

1. The authority citation for 48 CFR Parts 1806, 1808, 1811, 1813, 1815, 1825, 1835, 1837, 1842, 1848, and 1851 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1806—COMPETITION REQUIREMENTS

2. In section 1806.302–7, amend paragraph (c)(2) by removing ''(Code LC)'' and adding ''(Code L)'' in its place.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

3. In section 1808.002–70, paragraph (d) is revised to read as follows:

1808.002–70 Acquisition of radioisotopes.

* * * * *

(d) Guidance is available from DOE at URL *http://www.ornl.gov/isotopes/catalog.htm.*

1808.1100 [Amended]

4. Amend section 1808.1100 by removing ''NMI 6000.5'' and adding ''NPD 6000.1'' in its place.

PART 1811—DESCRIBING AGENCY NEEDS

5. Section 1811.107 is added to read as follows:

1811.107 Solicitation provisions. (NASA supplements paragraph (b))

(b) NASA uses the categorical method to report its use of voluntary consensus standards.

Therefore, use of the provision at 52.211–7 is not required. However, contracting officers must include in draft RFPs (DRFPs) the information required by 1815.201(c)(6)(A).

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

6. In section 1813.301, revise paragraphs (a) and (a)(i) to read as follows:

1813.301 Governmentwide commercial purchase card.

(a) The procurement officer or deputy procurement officer shall designate individual cardholders in accordance with center procedures, subject to the following limitations:

(i) Personnel other than contracting officers may be designated as cardholders for micro-purchases and for individual orders under BPAs up to $5,000 (see 1813.303–3(a)(4)), provided they complete training adequate to ensure appropriate use of the purchase card.

* * * * *

PART 1815—CONTRACTING BY NEGOTIATIONS

7. In section 1815.201, revise paragraph (c)(6)(A) to read as follows:

1815.201 Exchanges with industry before receipt of proposals.

(c)(6)(A) Except for acquisitions described in 1815.300–70(b), contracting officers shall issue draft requests for proposals (DRFPs) for all competitive negotiated acquisitions expected to exceed $1,000,000 (including all options or later phases of the same project). DRFPs shall invite comments from potential offerors on all aspects of the draft solicitation, including the requirements, schedules, proposal instructions, and evaluation approaches. Potential offerors should be specifically requested to identify unnecessary or inefficient requirements. If the DRFP contains Government-unique standards, potential offerors should be invited to identify voluntary consensus standards that meet the Government's requirements as alternatives to Government-unique standards cited as requirements, in accordance with FAR 11.101 and OMB Circular A–119. When considered appropriate, the statement of work or

the specifications may be issued in advance of other solicitation sections.

* * * * *

8. Revise section 1815.203–71 to read as follows:

1815.203–71 Headquarters reviews.

For RFPs requiring Headquarters review and approval, the procurement officer shall submit ten copies of the RFP to the Associate Administrator for Procurement (Code HS). Any significant information relating to the RFP or the planned evaluation methodology omitted from the RFP itself should also be provided.

9. In section 1815.404–471–1, revise paragraph (b) to read as follows:

1815.404–471–1 General.

* * * * *

(b) The contracting officer assigns values to each profit or fee factor; the value multiplied by the base results in the profit/fee objective for that factor. Each factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by NASA. The designated range provides values based on above normal or below normal conditions. Values outside the designated range must not be used. In the negotiation documentation, the contracting officer need not explain assignment of the normal value, but must address conditions that justify assignment of other than the normal value.

10. Section 1815.404–472 is added to read as follows:

1815.404–472 Payment of profit or fee under letter contracts.

NASA's policy is to pay profit or fee only on definitized contracts.

PART 1825—FOREIGN ACQUISITION

1825.7003 [Amended]

11. In section 1825.7003, amend paragraph (b) by removing the reference ''(pursuant to NMI 1050.9)''.

PART 1835—RESEARCH AND DEVELOP CONTRACTING

1835.016–71 [Amended]

12. In section 1835.016–71, amend paragraph (e)(4) by removing ''subparts 15.8 and 15.9'' and adding ''subparts 15.3 and 15.4'' in its place.

PART 1837—SERVICE CONTRACTING

1837.104 [Amended]

13. In section 1837.104, amend paragraph (b) by removing ''NMI 3304.1G'' and adding ''NPD 3000.1, Management of Human Resources'' in its place.

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

14. In section 1842.270, the first sentence in paragraph (a) is revised to read as follows:

1842.270 Contracting officer technical representative (COTR) delegations.

(a) The cognizant contracting officer may appoint a qualified Government employee to act as their representative in managing the technical aspects of a particular contract. * * *

1842.1405 [Amended]

* * * * *

15. In section 1842.1405, amend paragraph (a) by removing ''NHB 6200.1'' and adding ''NPG 6200.1'' in its place.

PART 1848—VALUE ENGINEERING

1848.104–2 Redesignated as 1848.104–3]

16. Section 1848.104–2 is redesignated as 1848.104–3 and is revised to read as follows:

1848.104–3 Sharing collateral savings. (NASA supplements paragraph (a))

(a) The contracting officer is authorized to make the determination that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

1851.101 [Removed]

17. Section 1851.101 is removed.

[FR Doc. 00–5376 Filed 3–8–00; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 65, No. 47
Thursday, March 9, 2000

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 98, and 130

[Docket No. 98–013–1]

Hawaii Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations by removing Honolulu, HI, from the lists of animal import centers and ports of entry that provide U.S. Department of Agriculture quarantine facilities for animals, birds, and poultry imported into the United States. We are also proposing to amend the regulations by adding Honolulu, HI, as a limited port for the importation of animals, birds, poultry, poultry products, and animal germ plasm that do not require U.S. Department of Agriculture quarantine facilities. These proposed actions would update the regulations to reflect the June 1997 closure of the Hawaii Animal Import Center.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by May 8, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–013–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–013–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–3276.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93 and 98 restrict the importation of specified animals and animal products into the United States to prevent the introduction of communicable diseases of livestock and poultry. The regulations designate animal import centers and ports of entry for the importation of certain animals, birds, poultry, poultry products, and animal germ plasm that require inspection or quarantine services.

The regulations in 9 CFR part 130 set forth the user fees that are assessed to reimburse the Animal and Plant Health Inspection Service (APHIS) for the cost of import- and export-related services provided at animal import centers and ports of entry.

Honolulu, HI, is currently listed in parts 93, 98, and 130 as a port of entry with an animal import center that serves as a quarantine facility. The quarantine facility known as the Hawaii Animal Import Center (HAIC) closed on June 30, 1997. The HAIC was located on property owned by the U.S. Coast Guard. APHIS had to close the facility and return the property to the Coast Guard because the Coast Guard was to vacate the property at the beginning of fiscal year 1998. We published a notice regarding the closure of the HAIC in the **Federal Register** on May 22, 1997 (62 FR 28002, Docket No. 97–039–1). Prior to the closure of the HAIC, the number of animals, birds, and poultry imported through the facility was low compared to the number imported through APHIS animal import centers located in Miami, FL, and Newburgh, NY.

To reflect the closure of the HAIC, we are proposing to amend the regulations in parts 93 and 98 by removing Honolulu, HI, from the lists of animal import centers and ports of entry that provide quarantine services. In addition, we propose to amend part 130 by removing all references to the animal import center in Honolulu, HI. We are, however, proposing to amend the regulations in part 93 by adding Honolulu, HI, as a limited port for the importation of animals birds, poultry, and poultry products that do not require U.S. Department of Agriculture (USDA) quarantine facilities. We are also proposing to amend the regulations in part 98 by adding Honolulu, HI, as a limited port for the importation of animal semen.

Importation of Birds

Section 93.102 designates ports for the importation of birds. In § 93.102, paragraph (a) lists the special ports that are equipped for the isolation and quarantine of pet birds that are imported in accordance with § 93.101(c) and performing or theatrical birds that are imported in accordance with § 93.101(f). In § 93.102, paragraph (d) lists the limited ports of entry for pet birds and performing or theatrical birds that do not require USDA quarantine facilities.

Due to the closure of the HAIC, we can no longer provide quarantine services for pet birds and performing or theatrical birds in Honolulu, HI. Therefore, we are proposing to remove Honolulu, HI, from the list of special ports in § 93.102(a). However, pet birds and performing or theatrical birds that are only required to undergo a veterinary inspection and pet birds that are allowed to do home quarantine may be imported through a limited port of entry listed in § 93.102(d). Because the port of entry at Honolulu, HI, has the personnel and facilities to provide such veterinary inspection services, we are proposing to add it to the list of limited ports in § 93.102(d) for the importation of pet birds and performing or theatrical birds that do not require USDA quarantine facilities.

Importation of Ratites

Section 93.103 contains, among other things, provisions for the importation of ratites. Section 93.103(a)(4)(ii) explains how to submit applications for quarantine space at the HAIC. We would remove that paragraph, as well as the final two sentences of § 93.103(a)(4)(iii), which state that a

separate waiting list will be maintained for space at the HAIC and that ostriches may not be quarantined at the HAIC.

In § 93.105, paragraph (c)(2) lists the ports of entry for ratites other than ostriches. In § 93.106, paragraph (b)(1) lists the quarantine facilities for ratites that are imported from any part of the world except Canada. In § 93.107, paragraph (b)(2) lists the ports at which ratites from Canada may enter the United States without quarantine if they meet the requirements set forth in § 93.107. Each of these paragraphs lists Honolulu, HI, as a port of entry or quarantine facility. The HAIC was the only facility in Hawaii that could provide sufficient space for the inspection and quarantine of ratites. Due to its closure, we can no longer provide inspection or quarantine services for ratites in Hawaii. Also, while the HAIC was open, the number of ratites that entered the facility for quarantine services was low. Therefore, we are proposing to remove the references to Honolulu, HI, in § § 93.105(c)(2), 93.106(b)(1), and 93.107(b)(2).

Importation of Poultry and Poultry Products

We are also proposing to add Honolulu, HI, to the list of limited ports in § 93.203. Those limited ports may be used for the importation of poultry and poultry products, such as poultry test specimens, hatching eggs, and day-old chicks, that do not require restraining and holding facilities for inspection. The port of entry at Honolulu, HI, has the personnel and facilities available to provide inspection services for poultry and poultry products that do not require restraining and holding facilities. Therefore, we are proposing to amend § 93.203(d) by adding Honolulu, HI, to the list of limited ports.

Air and Ocean Ports

Honolulu, HI, is also included in the lists of air and ocean ports for the importation of poultry (§ 93.203(a)), horses (§ 93.303(a)), ruminants (§ 93.403(a)), swine (§ 93.503(a)), miscellaneous animals (§ 93.703(a)(1)), and elephants, hippopotami, rhinoceroses, and tapirs (§ 93.805(a)(1)). We propose to remove references to Honolulu, HI, from these sections because they list ports that have USDA quarantine facilities. However, even though we are proposing to remove Honolulu, HI, from the list of ports in § 93.805(a)(1), elephants, hippopotami, rhinoceroses, and tapirs could be imported through Honolulu, HI, on a case-by-case basis in accordance with § 93.805(a)(2), if the animals will be inspected at a facility provided by the importer.

Limited Ports

Because Honolulu, HI, has inspection facilities for the entry of certain animals and animal products that do not require restraining and holding inspection facilities, we propose to add Honolulu, HI, to the lists of limited ports for the importation of horses (§ 93.303(d)), ruminants (§ 93.403(e)), and swine (§ 93.503(e)).

In addition, to maintain consistency with the proposed changes to part 93, we propose to remove Honolulu, HI, from the list of air and ocean ports in § 98.33(a) for the importation of animal semen and to add Honolulu, HI, to the list of limited ports in § 98.33(d) for the importation of animal semen.

Section 98.6 provides that embryos may be imported only at a port of entry listed in § 93.303 for horses, § 93.403 for ruminants, and § 93.503 for swine. Under this proposed rule, embryos could be imported through Honolulu, HI, because it would be listed in those sections as a limited port.

User Fees

In § 130.1, the definition of *Animal Import Center* lists the quarantine facilities operated by APHIS in Newburgh, NY; Miami, FL; and Honolulu, HI. We are proposing to remove Honolulu, HI, from the definition of *Animal Import Center.*

In addition, in § 130.1 the definition of *nonstandard care and handling* provides the locations and hours of operation of the animal import centers in footnote 2. We would remove the reference to Honolulu, HI, from footnote 2.

Miscellaneous

In § 93.106, paragraph (a) contains a reference to the Cooperative and Trust Fund Agreement and states that information regarding the agreement can be found in § 93.106(c)(7). The Cooperative and Trust Fund Agreement is found in § 93.106(c)(5). We are changing the reference, accordingly.

In § 93.404(a)(2), reference is made to § 93.430 for the importation of domestic ruminants from regions where foot-and-mouth disease or rinderpest has been determined to exist. On November 19, 1998, we published in the **Federal Register** (63 FR 64173–64175, Docket No. 98–070–3) a final rule to close the Harry S Truman Animal Import Center (HSTAIC). Based on the closure of HSTAIC, § § 93.430 and 93.431 were removed and reserved; however, a reference to § 93.430 in § 93.404(a)(2) was not removed. We are proposing to correct that oversight in this document.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule would amend the regulations in 9 CFR parts 93, 98, and 130 by removing Honolulu, HI, from the lists of animal import centers and ports of entry that provide USDA quarantine facilities for animals, birds, and poultry imported into the United States. These changes are necessary to reflect the closure of the facility known as the Hawaii Animal Import Center (HAIC). However, we would add Honolulu, HI, as a limited port for the importation of animals, birds, poultry, poultry products, and animal germ plasm that do not require USDA quarantine facilities.

The removal of Honolulu, HI, from the lists of animal import centers is primarily an editorial change following the previously announced closure of the HAIC. That closure primarily affected U.S. importers of animals, birds, and poultry that required quarantine services. After HAIC closed, those importers could no longer import these items into the United States through Honolulu, HI. However, prior to the closure of the HAIC, the number of animals, birds, and poultry imported through and quarantined at the port of Honolulu, HI, was low compared to the number imported through other animal import centers located in Miami, FL, and Newburgh, NY. For instance, in fiscal year 1997, the HAIC provided inspection and quarantine services for 40 animals and birds. However, in fiscal year 1997, the animal import center in Miami, FL, provided inspection and quarantine services for over 1,500 animals and birds; and the animal import center located in Newburgh, NY, provided services for over 4,000 animals from January 1, 1997, to December 31, 1997.

Based on the availability of the remaining animal import centers and ports of entry and the low level of use prior to closure of the HAIC, we believe that removing Honolulu, HI, from the lists of animal import centers and ports of entry that provide USDA quarantine facilities for animals, birds, and poultry imported into the United States would not have a significant economic effect on importers. In addition, our proposal to designate Honolulu, HI, as a limited port for the importation of animals, birds, poultry, poultry products, and

animal germ plasm that do not require USDA quarantine facilities would continue to provide a port of entry for U.S. importers of certain animals, birds, poultry, poultry products, and animal germ plasm.

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

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases and Imports.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR parts 93, 98, and 130 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 93.102 [Amended]

2. In § 93.102, paragraph (a) would be amended by removing the words ''Honolulu, HI;'' and paragraph (d) would be amended by adding the words ''Honolulu, HI;'' immediately after the words ''Atlanta, GA;''.

§ 93.103 [Amended]

3. In § 93.103, paragraph (a)(4)(ii) would be removed, and paragraph (a)(4)(iii) would be redesignated as paragraph (a)(4)(ii) and the last two sentences would be removed.

§ 93.105 [Amended]

4. In § 93.105, paragraph (c)(2) would be amended by removing the words ''Miami, FL; and Honolulu, HI'' and by adding the words ''and Miami, FL'' in their place.

§ 93.106 [Amended]

5. Section 93.106 would be amended as follows:

a. In paragraph (a), by removing the words ''paragraph (c)(7)'' and by adding the words ''paragraph (c)(5)'' in their place.

b. In paragraph (b)(1), by removing the words ''the Hawaii Animal Import Center at Honolulu, HI, when the port of entry is Honolulu, HI;''.

§ 93.107 [Amended]

6. In § 93.107, paragraph (b)(2) would be amended by removing the words ''Honolulu, HI;''.

§ 93.203 [Amended]

7. In § 93.203, paragraph (a) would be amended by removing the words ''Honolulu, Hawaii;'' and paragraph (d) would be amended by adding the words ''Honolulu, Hawaii;'' immediately after the words ''Atlanta, Georgia;''.

§ 93.303 [Amended]

8. In § 93.303, paragraph (a) would be amended by removing the words ''Honolulu, Hawaii;'' and paragraph (d) would be amended by adding the words ''Honolulu, Hawaii,'' immediately after the words ''Atlanta, Georgia;''.

§ 93.403 [Amended]

9. In § 93.403, paragraph (a) would be amended by removing the words ''Honolulu, Hawaii;'' and paragraph (e) would be amended by adding the words ''Honolulu, Hawaii,'' immediately after the words ''Atlanta, Georgia;''.

§ 93.404 [Amended]

10. In § 93.404, paragraph (a)(2) would be amended by removing the words '', except as provided in § 93.430''.

§ 93.503 [Amended]

11. In § 93.503, paragraph (a) would be amended by removing the words ''Honolulu, Hawaii;'' and paragraph (e) would be amended by adding the words ''Honolulu, Hawaii;'' immediately after the words ''Atlanta, Georgia;''.

§ 93.703 [Amended]

12. In § 93.703, paragraph (a)(1) would be amended by removing the words ''Honolulu, HI;''.

§ 93.805 [Amended]

13. In § 93.805, paragraph (a)(1) would be amended by removing the words ''Honolulu, Hawaii;''.

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

14. The authority citation for part 98 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 103–105, 111, 134a, 134b, 134c, 134d, 134f, 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 98.33 [Amended]

15. In § 98.33, paragraph (a) would be amended by removing the words ''Honolulu, Hawaii;'' and paragraph (d) would be amended by adding the words ''Honolulu, Hawaii;'' immediately after ''Atlanta, Georgia;''.

PART 130—USER FEES

16. The authority citation for part 130 would continue to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.2(d).

§ 130.1 [Amended]

17. Section 130.1 would be amended as follows:

a. In the definition of *Animal Import Center,* by removing the words ''Newburgh, New York; Miami, Florida; and Honolulu, Hawaii'' and adding the words ''Newburgh, New York, and Miami, Florida'' in their place.

b. In the definition of *Nonstandard care and handling*, by removing from footnote 2 the words ''7:30 a.m. to 11:30 a.m., Honolulu, HI;''.

Done in Washington, DC, this 3rd day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–5772 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–45–AD]

Airworthiness Directives; Eurocopter France Model SA–365N1, AS–365N2, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Eurocopter France Model SA–365N1, AS–365N2, and SA–366G1 helicopters, that currently requires initial and repetitive inspections of the tail rotor blade Kevlar tie-bar (Kevlar tie-bar) for cracks or delaminations. This action would require the same actions required by the existing AD, and would correct an incorrectly stated part number (P/N) in the existing AD. This proposal is prompted by a report of delamination of a Kevlar tie-bar. The actions specified by the proposed AD are intended to detect cracks that could lead to delamination of the Kevlar tie-bar, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–45–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this 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 No. 99–SW–45–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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–45–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Model SA–365N1, AS–365N2, and SA–366G1 helicopters. The DGAC advises that delamination outside certain tolerance limits may occur on Kevlar tie-bars.

On April 30, 1998, the FAA issued AD 98–10–04, Amendment 39–10515 (63 FR 25158, May 7, 1998), to require, within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 250 hours TIS, inspecting the Kevlar tie-bar for a crack or delamination and replacing any blade in which a crack or delamination is found with an airworthy blade. That action was prompted by a report of delamination of a Kevlar tie-bar. That condition, if not corrected, could result in loss of tail rotor control and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has discovered that a blade P/N was incorrectly stated in the existing AD. That P/N was incorrectly stated as 365A12–0020–20. The correct P/N is 365A12–0020–02.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the 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 these type designs 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 Model SA–365N1, AS–365N2, and SA–366G1 helicopters of the same type design, the proposed AD would supersede AD 98–10–04 to require, within 10 hours TIS, and thereafter at intervals not to exceed 250 hours TIS, inspecting the Kevlar tie-bar for a crack or delamination and replacing any blade in which a crack or delamination is found.

The FAA estimates that 47 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,000 per blade. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $152,280 to replace one blade and perform one inspection on each helicopter.

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

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10515 (63 FR 25158, May 7, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter France: Docket No. 99–SW–45–AD. Supersedes AD 98–10–04, Amendment 39–10515, Docket No. 97–SW–49–AD.

Applicability: Model SA–365N1, AS–365N2, and SA–366G1 helicopters, with tail rotor blade (blade), Part Number 365A12–010–all dash numbers, 365A12–0020–00, 365A33–2131–all dash numbers, or 365A12–0020–02, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect cracks that could lead to delamination of the tail rotor blade Kevlar tie-bar (Kevlar tie-bar), loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 250 hours TIS, inspect each Kevlar tie-bar for a crack or delamination in accordance with paragraph B, Operational Procedure, of Eurocopter France Service Bulletin 05.00.34, Revision 3, dated November 14, 1996.

(b) If any delamination or cracking is found during any of the inspections required by paragraph (a) of this AD, remove the blade and replace it with an airworthy blade before further flight.

(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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

(d) 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 helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 92–185–33(B)R4, dated December 4, 1996.

Issued in Fort Worth, Texas, on March 1, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–5734 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 883]

RIN: 1512–AC03

Proposed Addition of a New Grape Variety Name for American Wines (99R–142P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco, and Firearms has received a petition proposing to add a new name, ''Dornfelder'', to the list of prime grape variety names for use in designating American wines. Dornfelder is a red variety, developed in Germany in 1955, currently grown commercially in the United States.

DATES: Written comments must be received by May 8, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; Notice No. 883.

A copy of the petition and written comments in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Office of Liaison and Public Information, Room 6300, 650 Massachusetts Avenue, NW, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Berry, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927–8206.

SUPPLEMENTARY INFORMATION:

1. Background

Under 27 CFR 4.23(b), a wine bottler may use a grape variety name as the designation of a wine if not less than 75 percent of the wine (51 percent in some circumstances) is derived from that grape variety. Under § 4.23(d), a bottler may use two or more grape variety names as the designation of a wine if all varieties are listed on the brand label and the percentage of the wine derived from each grape variety is shown on the label.

Treasury Decision ATF–370 (61 FR 522), January 8, 1996, adopted a list of grape variety names that ATF has determined to be appropriate for use in designating American wines. The list of prime grape names and their synonyms appears at § 4.91, while additional alternative grape names temporarily authorized for use are listed at § 4.92.

ATF has received a petition proposing that a new grape variety name be listed in § 4.91. Under § 4.93 any interested person may petition ATF to include additional grape varieties in the list of prime grape names. Information with a petition should provide evidence of the following:

- Acceptance of the new grape variety;
- The validity of the name for identifying the grape variety;
- Information that the variety is used or will be used in winemaking; and
- Information that the variety is grown and used in the United States.

For the approval of names of new grape varieties, the petition may include:

- A reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization;

• A reference to a plant patent, if patented; and

• Information about the commercial potential of the variety such as the acreage planted or market studies.

Section 4.93 also places certain restrictions on grape names which will be approved. A name will not be approved:

• If it has previously been used for a different grape variety;

• If it contains a term or name found to be misleading under § 4.39; or

• If a name of a new grape variety contains the term ''Riesling.''

The Director reserves the authority to disapprove the name of a grape variety developed in the United States if the name contains words of geographical significance, place names, or foreign words which are misleading under § 4.39.

2. Dornfelder Petition

ATF has received a petition proposing to add the name ''Dornfelder'' to the list of prime grape variety names approved for the designation of American wines. Mr. John Weygandt and Ms. Alice Weygandt of Stargazers Vineyard in Coatesville, Pennsylvania, submitted the petition.

According to information submitted by the petitioners, Dornfelder is red variety, developed in Germany in 1955. It is a crossing of Helfenstein (a crossing of Fruhburgunder and Trollinger) and Heroldrebe (a crossing of Portugieser and Limberger). According to Jancis Robinson's Vines, Grapes and Wines (First American Edition 1986), Dornfelder is ''* * * perhaps Germany's most promising 'new' red crossing.'' The name ''Dornfelder'' is derived from Imanuel Dornfeld, founding father of the Wurttemberg viticultural school during the mid-19th century. ''Dornfelder'' was approved as a varietal name under German wine regulations in 1980.

In the United States, the breeders have obtained plant variety protection through the Plant Variety Protection Act, 7 U.S.C. Chapter 57, until 2009. The petitioners planted 600 vines of this variety in 1997, which will bear a commercial crop in 2000. In addition, three other growers in the states of Virginia, Pennsylvania, and Michigan have planted this variety. Dornfelder plants have been offered for sale by American Nursery, located in California and Virginia, since 1996. Based on the evidence presented in the petition, ATF is proposing Dornfelder as a grape variety for inclusion in § 4.91.

3. Public Participation

Who May Comment on This Notice?

ATF requests comments from all interested parties. We will carefully consider all comments we receive on or before the closing date. We will also carefully consider comments we receive after that date if it is practical to do so, but we cannot assure consideration for late comments. ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We may also disclose the name of any person who submits a comment. A copy of this notice and all comments will be available for public inspection during normal business hours at: ATF Reference Library, Office of Liaison and Public Information, Room 6300, 650 Massachusetts Avenue, NW, Washington, DC 20226.

How Do I Send Facsimile Comments?

You may submit comments of not more than three pages by facsimile transmission to (202) 927–8525. Facsimile comments must:

• Be legible.
• Reference this notice number.
• Be 8½″ × 11″ in size.
• Contain a legible written signature.
• Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-Mail) Comments?

You may submit comments by e-mail by sending the comments to nprm.notice883@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

• Contain your name, mailing address, and e-mail address.
• Reference this notice number.
• Be legible when printed on not more than three pages 8½″ × 11″ in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet web site at *http://www.atf.treas.gov/core/regulations/rules.htm.*

3. Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation will permit the use of the grape varietal name Dornfelder. No negative impact on small entities is expected. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

4. Drafting Information

This notice was written by Tom Busey and Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspections, Imports, Labeling, Packaging and containers, Wine.

Authority and Issuance

Accordingly, 27 CFR part 4, Labeling and Advertising of Wine, is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Para. 2. Section 4.91 is amended by adding the name ''Dornfelder'', in alphabetical order, to the list of prime grape names, to read as follows:

§ 4.91 List of approved prime names.

* * * * *

Dornfelder

* * * * *

Signed: December 15, 1999.

John W. Magaw,

Director.

Approved: January 21, 2000.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement)

[FR Doc. 00–5769 Filed 3–8–00; 8:45 am]

BILLING CODE 4810–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–147–FOR]

Indiana Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposes revisions to its statutes that would allow the use of money from its post-1977 abandoned mine reclamation fund, under specified circumstances, to replace domestic water supplies disrupted or affected by surface coal mining and reclamation operations. Indiana intends to revise its program in order to provide additional protection to society and the environment from the adverse effects of surface coal mining operations.

This document gives the times and locations that the Indiana program and amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., e.s.t., April 10, 2000. If requested, we will hold a public hearing on the amendment on April 3, 2000. We will accept requests to speak at the hearing until 4:00 p.m., e.s.t. on March 24, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Indiana program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6700.

Indiana Department of Natural Resources, Bureau of Mine Reclamation, 402 West Washington Street, Room W–295, Indianapolis, Indiana 46204, Telephone: (317) 232–1291.

Indiana Department of Natural Resources, Division of Reclamation, R.R. 2, Box 129, Jasonville, Indiana 47438–9517, Telephone: (812) 665–2207.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, and 914.16.

II. Description of the Proposed Amendment

By letter dated February 25, 2000 (Administrative Record No. IND–1686), Indiana sent us an amendment to its program under SMCRA. Indiana sent the amendment at its own initiative. Indiana proposes to revise the Indiana Surface Coal Mining and Reclamation Act at Indiana Code (IC) 14–34. The Indiana General Assembly amended IC 14–34–6–15, effective July 1, 1999 (House Enrolled Act No. 1568).

IC 14–34–6–15, Abandoned Mine Reclamation Fund

1. Indiana revised IC 14–34–6–15(b) by adding a new provision at subdivision (2) and reformatting the existing provisions. The revised subsection reads as follows:

(b) The post-1977 abandoned mine reclamation fund is established. The fund consists of bond forfeiture money collected under section 16 of this chapter and the civil penalties described in IC 14–34–16–9. The fund may be used as follows:

(1) To effect the restoration of land not otherwise eligible for federal funding on which there has been surface mining activity after August 3, 1977.

(2) To replace domestic water supplies disrupted or affected by a surface coal mining and reclamation operation, including the disposal of coal combustion waste (as defined in IC 13–19–3–3), where the surface coal mining and reclamation operation has been completed and is no longer subject to IC 14–34.

The money held for this purpose may not exceed an amount established by the department that is sufficient to enable the director to cover the anticipated cost of restoration.

2. Indiana revised subsection (c) by adding the language ''or replacement of water.'' The revised subsection reads as follows:

(c) At least five hundred thousand dollars ($500,000) in the fund is dedicated as collateral for the bond pool under IC 14–34–8 and may not be used for the restoration of land or replacement of water described in subsection (b).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Indiana program.

Written Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Your written comments should be specific and pertain only to the issues

proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. IN–147–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Indianapolis Field Office at (317) 226–6700.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on March 24, 2000. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The hearing will not be held if no one requests an opportunity to speak at the public hearing.

To assist the transcriber and ensure an accurate record, we request that you provide us with a written copy of your testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments 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

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on 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. Therefore, this rule will ensure that existing requirements previously published 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.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 1, 2000.

John W. Coleman,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 00–5754 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–05–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

[Docket No. 99–1]

RIN 3014–AA20

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; Extension of Comment Period

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On November 16, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a Notice of Proposed Rulemaking to revise and update its accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA). The comment period was scheduled to close on March 15, 2000. The Access Board is extending the comment period until May 15, 2000 to allow the public additional time to prepare comments on the proposed rule.

DATES: Comments should be received by May 15, 2000.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Fax number (202) 272–5447. E-mail comments should be sent to

docket@access-board.gov. Comments sent by e-mail will be considered only if they include the full name and address of the sender in the text. Comments will be available for inspection at the above address from 9:00 a.m. to 5:00 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: Marsha Mazz (on the ADA Accessibility Guidelines) and Jim Pecht (on the ABA Accessibility Guidelines) Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone numbers (202) 272–5434 extension 121 or extension 128 (voice); (202) 272–5449 (TTY). E-mail address: TA@access-board.gov. These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of the proposed rule may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 1 on the telephone keypad, then 1 again, and requesting publication S–36 (ADA and ABA Accessibility Guidelines Notice of Proposed Rulemaking). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication S–36. The proposed rule is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or Ascii text). The proposed rule is also available on the Access Board's Internet site in HTML, Ascii text and PDF formats (http://www.access-board.gov/ada-aba/guidenprm.htm).

Extension of Comment Period

On November 16, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a Notice of Proposed Rulemaking to revise and update its accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA). 64 FR 62248 (November 16, 1999). The comment period was scheduled to close on March 15, 2000. The Access Board is extending the comment period until May 15, 2000 to allow the public additional time to prepare comments on the proposed rule.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 00–5639 Filed 3–8–00; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 184–0220b; FRL–6547–1]

Proposed Approval and Promulgation of California State Implementation Plan for San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). The revisions are rules submitted by the State of California on behalf of the District to apply as general provisions for the implementation of NSR and other SIP requirements for stationary sources in the District.

The intended effect of proposing approval of these rules is to control air pollution in accordance with the requirements of the Act. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments on this proposed action must be received in writing by April 10, 2000.

ADDRESSES: Written comments on this action must be sent to David Albright at the Region IX mailing address listed below.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours at the following address: Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, California 92123–1096

FOR FURTHER INFORMATION CONTACT: David Albright (415) 744–1627 or albright.david@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is proposing to approve the following rules into the SIP: Rule 19.3—Emission Information and Rule 60—Circumvention. Rule 19.3 was adopted by the District on May 15, 1996, and submitted to EPA by the California Air Resources Board (CARB) as a revision to the SIP on October 18, 1996. Rule 60 was adopted by the District on May 17, 1994, and submitted to EPA by CARB on July 13, 1994.

For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Dated: February 11, 2000

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–5202 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT061–7220B; A–1–FRL–6542–2]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut and Rhode Island; Clean Fuel Fleets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve both Connecticut's and Rhode Island's Clean Fuel Fleets Substitute Plan, incorporating them into the State Implementation Plan (SIP). In the Final Rules Section of this **Federal Register**, EPA is approving these SIP submittals as a direct final rule without prior proposal because we view them as noncontroversial and anticipate no adverse comments. See the direct final rule for detailed rationale for the

approval. If EPA receives no adverse comments in response to this action, no further activity is contemplated. If EPA does receive adverse comments, we will withdraw the direct final rule and respond to all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. If you are interested in commenting on this action, you should do so at this time.

DATES: Written comments must be received on or before April 10, 2000.

ADDRESSES: You may mail comments to David B. Conroy, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, EPA Region 1, One Congress Street, Suite 1100 (CAA), Boston, MA 02114. You may also email comments to judge.robert@epa.gov.

You may review copies of the relevant documents to this action by appointment during normal business hours at the Office Ecosystem Protection, EPA Region 1, One Congress Street, Boston, Massachusetts. In addition, the information for each respective State is available at the Bureau of Air Management, Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, Connecticut 06106–1630; and the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge at 617–918–1045 or judge.robert@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule, which is located in the Rules Section of this **Federal Register**.

Dated: February 14, 2000.

Mindy S. Lubber,

Acting Regional Administrator, EPA–New England.

[FR Doc. 00–5201 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 022–0185; FRL–6548–6]

Approving Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) which concern several Ventura County Air Pollution Control District (District) rules about permitting and New Source Review (NSR) for stationary sources. EPA also proposes to delete from the SIP four rules that are obsolete. The rules subject to this action are both for general permitting requirements and for requirements specific to major new or modified air emission sources. A description of these rules is in our technical support document (TSD) in the administrative record for this action.

The intended effect of proposing limited approval and limited disapproval is to ensure the District's permitting and NSR rules are consistent with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action will incorporate these rules into the federally approved SIP. Although the rules generally strengthen the SIP, some of the rules subject to this action do not fully meet the CAA requirements for non-attainment areas and contain deficiencies which must be corrected. The rules have been evaluated based on CAA guidelines for EPA action on SIP submittals and general rulemaking authority.

In this document we are also requesting comments on one issue.

DATES: Comments must be received by April 10, 2000.

ADDRESSES: Send comments to: Nahid Zoueshtiagh, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. You can review and copy these rules, the existing SIP rules and EPA's TSD at EPA's Region 9 office from 8:00 AM to 4:00 PM Monday-Friday. A reasonable fee may be charged for copying. Copies of the submitted rules are also available for inspection at the following locations:

- California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.
- Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Nahid Zoueshtiagh at (415) 744–1261.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.

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I. What Action Is EPA Proposing?

1. Limited approval and disapproval of Permitting and New Source Review Rules.

EPA today proposes a limited approval and limited disapproval of revisions to the California SIP for the District rules presented in Table 1. Upon final action, the rules will replace the existing SIP rules, also presented in Table 1.

TABLE 1.—RULES SUBJECT TO TODAY'S PROPOSED ACTION

Rule No.	Existing SIP title	SIP approval date	Current rule title	Adoption date
10	Permits Required	6/18/82	Permits Required	6/13/95
11	Application Contents	6/18/82	Definitions for Regulation II	6/13/95
12	Statement by Engineer or Application Preparer	2/3/89	Application for Permits	6/13/95
13	Statement by Applicant	6/18/82	Action on Applications for an Authority to Construct.	6/13/95
14	Trial Test Runs	9/22/72	Action on Application for a Permit to Operate	6/13/95

TABLE 1.—RULES SUBJECT TO TODAY'S PROPOSED ACTION—Continued

Rule No.	Existing SIP title	SIP approval date	Current rule title	Adoption date
15	Permit Issuance	4/17/87	Standards for Permit Issuance	6/13/95
15.1	None		Sampling and Testing Facilities	10/12/93
16	Permit Contents	6/18/82	BACT Certification	6/13/95
18	Permit to Operate-Application Required for Existing Equipment.	9/22/72	None—Repealed	6/13/95
21	Expiration of Applications and Permits	6/18/82	None—Repealed	6/13/95
23	Exemptions from Permits	6/18/82	Exemptions from Permit	7/9/96
24	Source Recordkeeping & Reporting	6/18/82	Source Recordkeeping & Reporting	9/15/92
25	Action on Applications	6/18/82	None—Repealed	6/13/95
26	New Source Review	7/1/82	New Source Review	10/22/91
26.1	All New & Modified Stationary Sources	7/1/82	New Source Review (NSR) Definitions	1/13/98
26.2	All New & Modified Stationary Sources-Attainment Pollutants.	7/1/82	Requirements	1/13/98
26.3	All New & Modified Stationary Sources Non-attainment Pollutants.	7/1/82	Exemptions	1/3/98
26.4	Banking	None	Emission Banking	1/13/98
26.5	Power Plants	7/1/82	Community Bank	1/13/98
26.6	Air Quality Impact Analysis & Modification	7/1/82	Calculations	1/13/98
26.7	None		NSR-Notification	12/22/92
26.8	None		NSR-Permit to Operate	10/22/91
26.9	None		PowerPlants	10/22/91
26.1	None		Prevention of Significant Deterioration (PSD)	1/13/98
29	Conditions on Permit	6/18/82	Conditions on Permits	10/22/91
30	Permit Renewal	5/3/84	Permit Renewal	5/30/89
37	Source Record Keeping and Reporting	5/18/77	None—Replaced by Rule 24	5/23/79

Generally, the District rules subject to this action will strengthen the SIP. However, some rules contain deficiencies and are not fully approvable under part D of the CAA. Therefore, EPA today proposes a limited approval and limited disapproval of these rules. If our final action remains a limited approval and limited disapproval, the District will have 18 months from the date of the final action to correct any deficiencies to avoid federal sanctions. See CAA section 179(b). Further, the District's failure to correct the deficiencies will trigger the Federal implementation plan requirements under 110(c). We have summarized the rule deficiencies in section II of this document. A discussion of the rules subject to this action, and our evaluation are contained in the TSD for this rulemaking action. The TSD is available from the EPA Region 9 office.

2. Removal of four rules from the SIP

In addition to our action on the rules listed above, we propose to delete the District Rules 18, 21, 25 and 37 from the SIP. As Table-1 shows, these rules have already been repealed by the District. We are approving removal of these rules because their requirements are now contained in the rules subject to today's action.

3. Removal of Conditions in 1981 NSR SIP Approval

In addition to the above proposed actions, we propose to delete the District NSR rule conditions identified when EPA finalized the NSR rules in 1981. See 46 FR 21757 and 40 CFR 52.232(a)(11). These conditions are moot today for the following reasons:

- The current rules will, upon final approval, supercede the 1980 rules;
- EPA has not taken action on any revisions to the District's NSR rule since 1981;
- The District has revised and submitted new NSR rules to comply with the 1990 CAA amendments.

II. How Did EPA Arrive at the Proposed Action?

1. Overview

EPA evaluated the District rules for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). Our interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents. EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing non-attainment NSR SIP requirements (See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion.

The Act requires States to comply with certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act require that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act requires that plan provisions for non-attainment areas shall meet the applicable provisions of section 110(a)(2). We believe that once the District rules subject to this action are approved into the SIP, they will strengthen the existing SIP by:

- Including major source and major modification thresholds that are consistent with the 1990 Clean Air Act Amendments for major stationary sources and major modifications locating in the District which is classified a severe ozone non-attainment area;
- Establishing the appropriate emissions offset ratio for major stationary sources and major modifications locating in severe ozone non-attainment areas;
- Establishing a comprehensive permitting program;

• Clarifying the existing requirements.

2. Deficiencies of Permitting and New Source Review Rules

We are proposing limited approval and limited disapproval for Rule 10 (Permits Required), Rule 11 (Definitions for Regulation II), Rule 12 (Applications for Permits), Rule 13 (Action on Applications for an Authority to Construct (ATC)), Rule 14 (Action on Applications for a Permit to Operate (PTO)), Rule 15 (Standards for Permit Issuance), Rule 15.1 (Sampling and Testing Facilities), Rule 16 (BACT Certification), Rule 23 (Exemptions from Permit), Rule 24 (Recordkeeping & Recording), Rule 26 and its subsection rules (New Source Review), Rule 29 (Conditions on Permits), and Rule 30 (Permit Renewal). These rules were submitted by the California Air Resources Board (CARB) to EPA for incorporation into the SIP. For some rules the District has submitted numerous revisions since the initial SIP approval dates. We are taking action only on the latest SIP submittal. The submittal dates for the rules subject to this action, shown in parentheses, are as follows.

• Rules 30 (3/26/90)
• Rules 26, 26.8–26.9 (1/28/92)
• Rule 29 (6/19/92)
• Rule 24 (11/12/92)
• Rule 26.7 (5/13/93)
• Rule 15.1 (3/29/94)
• Rules 10–15, 16, 18, 21 and 25 (10/13/95)
• Rule 23 (10/18/96)
• Rules 26.1–26.6, and 26.10 (5/18/98)

Although the latest rules that were submitted and are being acted on in this action will strengthen the SIP, the rules have several deficiencies which prevent EPA from being able to fully approve them. These deficiencies relate to Rules 10 and 26. We also note that for Rule 15 we read the reference to a variance as being limited to incorporating a compliance schedule, and not providing any latitude to avoid compliance with an applicable requirement. In addition to identifying the deficiencies, we are suggesting how to correct them. Following is a summary of the rule deficiencies which must be corrected to support full approval:

a. Deficiencies with Rule 10

Part 10.2.b of this rule provides an exemption from obtaining an ATC for emission units which relocate within five miles in the District. This exemption applies only to cases in which there is no emission increase for the relocating units. However, the exemption is not limited to a particular equipment size or type or amount of emissions. Under this exemption, the emission units must only obtain a PTO at the new location. We understand that historically the District has used this provision of the rule for relocation of very small sources (such as dry cleaners) that often relocate because of lease expiration.

We are disapproving this exemption because issuance of only a PTO for the relocated units at the new location will not satisfy two important requirements ensured through an ATC. The first is an analysis for the best available control technology (BACT), as provided in District's Rules 11 and 26. The second is public notification. In regard to the BACT requirements, it should be noted that for non-attainment pollutants, prior to the issuance of an ATC, EPA requires the lowest achievable emission rate (LAER) instead of BACT. However, as discussed in the TSD for this action, EPA has determined that the District's BACT requirements satisfy the federal LAER requirements.

The relocation exemption under Rule 10 does not have any restrictions on the number of units, size, type or the age of the relocating emission unit. Therefore a relocating unit, regardless of its age (i.e. the issuance date of its ATC), could operate under its existing BACT which was determined at the time of the ATC issuance. Further, Rule 10.B.2.d which requires a PTO to include a statement that the PTO shall not be construed to allow any emissions unit to operate in violation of any applicable State or Federal standards, will not satisfy the ATC requirements for BACT and public notice.

We believe Rule 10 is deficient because it circumvents both of the key requirements—BACT and public notice for an ATC. If the District believes that this type of exemption is necessary and justified for certain types of very small sources and operations, then it must clarify the rule and set specific conditions for the exemption from an ATC for very small relocating emission units.

Further, the District must revise section A.3 of its Rule 26.3 (NSR exemption for relocated units) to reflect revisions it is making to Rule 10 to correct the deficiency.

b. Deficiencies with Rule 26

Rules 26.1 through 26.10 constitute the District NSR program. The rules apply to sources of air pollution that require an ATC or a PTO. According to these rules, any new, modified, replaced or relocated major sources of emissions must apply BACT, and must obtain offsets for the increased air pollutants. Rule 26 has three areas of deficiencies. The first deficiency is about the requirements for offsetting air emission increases. The NSR rules must meet the CAA section 173(c)(2) requirements for offsetting air emissions increases. The Act requires that sources provide offsets in order to obtain an ATC permit. Specifically, the Act requires that offsetting emission reductions must be federally enforceable at the time that the NSR permit is issued (section 173(a)), and in effect by the time the source commences operation (section 173(c)(1)). In addition, section 173(c)(2) requires that the offsets be surplus of all other requirements of the Act. In other words, the CAA does not allow the use of emission reduction credits (ERCs) which were surplus some years ago when they were banked, but which are no longer surplus at the time that the ATC permit is issued. Thus, the District is required to adjust all emission reductions to ensure that the requirement of section 173(c)(2) for surplus ERCs is met at the time that the ERCs are used. The District rule is deficient because it does not require that ERCs be surplus at the time of use. To be corrected, Rules 26.2.B and 26.6.D.7.b must specify that the ERCs be surplus at the time of use. The District must revise 26.2.B and 26.6.D.7 to add this requirement. The District should also revise the definition of major modification in Rule 26.1.16, to add that in calculating contemporaneous net emission increases, ERCs that are not surplus at the time of use shall not be included.

A second deficiency in the District NSR program is Rule 26.2.C. Rule 26.2.C provides authority to the District to deny a permit to operate to a source which would cause the violation of any ambient air quality standards. The rule, however, must also provide the District with the authority to deny a permit if a source would cause increases in pollution concentrations over the baseline concentration and would cause violation of ambient air increments. To correct this deficiency, the District must revise this rule to include an authority to deny a permit to operate if a source would cause violation of ambient air increments.

The third deficiency in District's NSR program is about relying entirely on California Environmental Quality Act (CEQA) for the alternatives analysis required by section 173(a)(5) of the Act. We are specifically concerned about certain exemptions provided by CEQA which could result in bypassing the federal requirements for the alternatives analysis. Rule 26.2.E allows a source to

comply with the alternatives analysis by qualifying for a statutory or categorical exemption, or a negative declaration pursuant to CEQA. The CAA does not contain any exemptions from the requirement to conduct an alternatives analysis. The District must revise the rule to remove any exemptions. Further, although the District may base its alternatives analysis on materials developed under CEQA, the District must independently conclude that the alternatives analysis demonstrates that the benefits of the proposed source significantly outweigh the environmental and social cost.

3. Removing Rules 18, 21, 25 and 37

In addition to our proposed limited approval and limited disapproval action on the permitting and NSR rules, we propose to delete Rules 18, 21, 25 and 37. These rules are obsolete today for the following reasons:

- The District has repealed them;
- The requirements of Rules 18, 21 and 25 are contained in Rules 10, 12 and 13.
- The requirements of Rule 37 are now contained in Rule 24.

III. EPA Solicits Comment on One Issue

We are soliciting comments on the following issue:

1. Public Notification

The District does not require public notification for its preliminary ATC decisions for all emission sources. The public notification rule (Rule 26.7) only requires public notification for an ATC if the potential to emit (PTE) from all new, modified, replacement or relocated units exceeds the limits presented in Table—2.

TABLE #2.—PTE THRESHOLD FOR PUBLIC NOTIFICATION

[In tons per year]

#Nitrogen Oxides (NO_X)	15.0
Reactive Organic Compounds (ROC)	15.0
Sulfur Oxides (SO_X)	15.0
Particulate Matter (PM–10)	15.0
Carbon Monoxide (CO)	100.0

Therefore, if the PTE is lower than the above limits, the District is not required to notify the public. Please note that the District's above listed threshold levels are lower than the federal significance levels for NO_X, ROC, and SO_X, and are equal to the federal significance levels for PM–10 and CO. The federal NSR regulation under 40 CFR 51.161 does not specify any emissions threshold for public notification. 40 CFR 51.160(e), however, requires States to ''identify types and sizes of facilities that will be subject to review. * * *'' and ''discuss the basis for determining which facilities will be subject to review.'' We are soliciting comment on whether the District's PTE emission levels in Rule 26.7 are appropriate to ensure the public has the opportunity to review the proposed ATC permits.

IV. Overview of Limited Approval/Disapproval

Because of the deficiencies identified in this rulemaking, Rules 10, 15 and 26 are not approvable pursuant to section 182(a)(2)(A) of the CAA and EPA cannot grant full approval of the District's permitting and NSR program under section 110(k)(3) and part D. Rules 10, 15 and 26 are not consistent with the interpretation of sections 110(a)(2)(C) and 173 of the CAA, and may lead to rule enforceability problems.

Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3).

However, EPA may grant a limited approval of the submitted permitting and NSR rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of the District's submitted rules 10–15, 15.1, 16, 23–24, 26, 26.1–26.10 and 29–30 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of the District's rules 10–15, 15.1, 16, 23–24, 26, 26.1–26.10 and 29–30, because they contain deficiencies and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated non-attainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: withholding highway funding and increasing the offset requirements. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final limited disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this proposed rulemaking have been adopted by the District and are currently in effect in the District. EPA's final limited disapproval action will not prevent the District or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

1. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

2. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

3. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084

requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

4. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

5. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

6. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

7. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: February 25, 2000.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 00–5629 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[(DE046–1022b); FRL–6548–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Regulation 37—NO_X Budget Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the State of

Delaware. This revision implements the Ozone Transport Commission's (OTC) memorandum of understanding (MOU) which describes a regional nitrogen oxides (NO_X) cap and trade program that will significantly reduce NO_X emissions generated within the ozone transport region. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 10, 2000.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, at the EPA Region III address above, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: February 24, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–5615 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 010300F]

RIN 0648–AM42

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for the Scallop Fishery

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 4 to the Fishery Management Plan for the Scallop Fishery Off Alaska (FMP) for Secretarial review. Amendment 4 to the FMP would create a license limitation program (scallop LLP) in the Federal scallop fishery off Alaska that would limit the number of participants and reduce fishing capacity in this fishery through a limited access system in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is proposed to achieve conservation and management goals for the scallop fishery and is intended to further the objectives of the FMP.

DATES: Comments on the amendment must be submitted on or before May 8, 2000.

ADDRESSES: Comments on this amendment should be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK. Copies of Amendment 4 to the FMP, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the amendment are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: The Council prepared the FMP under the authority of the Magnuson-Stevens Act. The FMP delegates to the State of Alaska (State) the authority to manage all aspects of the scallop fishery, except limited access. Federal regulations governing the scallop fishery appear at 50 CFR parts 600 and 679. State regulations governing the scallop fishery appear in the Alaska Administrative Code (AAC) at 5 AAC Chapter 38—Miscellaneous Shellfish. The Magnuson-Stevens Act provides authority for the FMP to delegate to the State management responsibility for the scallop fishery in Federal waters off Alaska.

The Council adopted the scallop LLP as Amendment 4 to the FMP in February 1999. If approved, the proposed LLP would replace the existing Federal moratorium on the entry of new vessels into the scallop fishery. This moratorium is scheduled to expire on June 30, 2000. The scallop fishery off Alaska has been characterized as overcapitalized. In February 1998, the Council reviewed participation and other data from the scallop fishery and developed a problem statement and alternatives for analysis of a scallop LLP to replace the existing vessel moratorium.

The Council developed six alternatives and two options for the scallop LLP. The Council prepared an EA/RIR/IRFA for Amendment 4, which describes the management background, the purpose and need for action, the alternatives and options, and the socio-economic impacts of the alternatives and options. A copy of the EA/RIR/IRFA can be obtained from the Council (see **ADDRESSES**).

The Council's preferred alternative was the most restrictive considered by the Council and would result in the issuance of a total of nine licenses. The Council's intent in adopting the most restrictive alternative and options was to create an LLP that would reduce the size of the fishery and eliminate growth in harvest capacity.

Under the preferred alternative, licenses would be issued to holders of either Federal or State moratorium permits who used their moratorium permits to make legal landings of scallops in each of any 2 calendar years during the period beginning January 1, 1996, through October 9, 1998 (qualifying period). A scallop LLP license would authorize the person named on the license to catch and retain scallops consistent with applicable State regulations in all waters off Alaska that are open for scallop fishing. The license holder would not be required to be on

board a vessel when it is catching and retaining scallops; however, an original copy of the scallop LLP license would be required to be onboard the vessel at that time. No license holder would be allowed to hold more than two licenses.

Licenses premised on the legal landings of scallops harvested only from Cook Inlet (State Registration Area H) during the qualifying period would have a gear endorsement that would limit allowable gear to a single 6-ft (1.8 m) dredge when fishing for scallops in any area.

No increase in vessel length would be allowed. Each scallop LLP license would specify the maximum length overall (MLOA) of a vessel that the license holder could use to catch and retain scallops. The specified MLOA would be equal to the length overall of the longest vessel used by the applicant to make legal scallop landings during the qualifying period. A scallop LLP license could be used on any vessel equal to or less than the MLOA.

The Council also recommended that no person, corporation, or entity could own more than two scallop licenses. This two-license cap would limit excessive shares in the scallop fishery in accordance with the Magnuson-Stevens Act national standard 4. The two-license cap would prevent any person already holding two licenses from receiving additional scallop LLP licenses by transfer.

The Magnuson-Stevens Act requires that each regional fishery management council submit each FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or FMP amendment, immediately publish a notification in the **Federal Register** that the amendment is available for public review and comment. This action constitutes such notice for FMP Amendment 4. NMFS will consider the public comments received during the comment period in determining whether to approve this FMP amendment. To be considered, a comment must be received by close of business on the last day of postmark or transmission date.

Dated: March 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5780 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 65, No. 47

Thursday, March 9, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Uruguay Round Agricultural Safeguard Trigger Levels

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of product coverage and trigger levels for safeguard measures provided for in the Uruguay Round Agreement on Agriculture.

SUMMARY: This notice lists the updated quantity trigger levels for products which may be subject to additional import duties under the safeguard provisions of the Uruguay Round Agreement on Agriculture. It also includes the relevant period applicable for trigger levels on each of those products.

EFFECTIVE DATE: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Cathy S. McKinnell, Multilateral Trade Negotiations Division, Foreign Agricultural Service, room 5530–South Building, U.S. Department of Agriculture, Washington, DC 20250–1022, telephone at (202) 720–6064, or email mckinnell@fas.usda.gov.

SUPPLEMENTARY INFORMATION: Article 5 of the Uruguay Round Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication during the Uruguay Round if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties to be imposed if the volume of imports of an article exceeds the average of the most recent 3 years for which data are available by 5, 10, or 25 percent, depending on the article. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity, may be applied at any given time to an article.

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** information regarding the price and quantity safeguards, including the quantity trigger levels, which must be updated annually based upon import levels during the most recent three years. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994. The Secretary of Agriculture further delegated the duty to the Administrator of the Foreign Agricultural Service (7 CFR 2.43 (a)(2)). The Annex to this notice contains the updated quantity trigger levels.

Additional information on the products subject to safeguards and the additional duties which may apply can be found in subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States and in the Secretary of Agriculture's Notice of Safeguard Action, published in the **Federal Register** at 60 FR427 on January 4, 1995.

Notice

As provided in section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the Agreement on Agriculture, the safeguard quantity trigger levels previously notified are superceded by the levels indicated in the Annex to this notice.

Issued at Washington, DC this 29th day of February, 2000.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.

Annex

The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register**, at 60 FR 427 on Wednesday, January 4, 1995.

QUANTITY BASED SAFEGUARD TRIGGER

Product	Trigger level	Period
Beef	982,666 mt	January 1, 2000 to December 31, 2000.
Mutton	12,612 mt	January 1, 2000 to December 31, 2000.
Cream	6,527,820 liters	January 1, 2000 to December 31, 2000.
Evaporated or Condensed Milk	4,584,100 kilograms	January 1, 2000 to December 31, 2000.
Nonfat Dry Milk	4,426,348 kilograms	January 1, 2000 to December 31, 2000.
Dried Whole Milk	2,735,859 kilograms	January 1, 2000 to December 31, 2000.
Dried Cream	541 kilograms	January 1, 2000 to December 31, 2000.
Dried Whey/Buttermilk	147,571 kilograms	January 1, 2000 to December 31, 2000.
Butter	7,335,863 kilograms	January 1, 2000 to December 31, 2000.
Butter Oil and Butter Substitutes	7,480,980 kilograms	January 1, 2000 to December 31, 2000.
Dairy Mixtures	3,000,734 kilograms	January 1, 2000 to December 31, 2000.
Blue Cheese	3,309,790 kilograms	January 1, 2000 to December 31, 2000.
Cheddar Cheese	14,724,970 kilograms	January 1, 2000 to December 31, 2000.
American Type Cheese	7,848,260 kilograms	January 1, 2000 to December 31, 2000.
Edam/Gouda Cheese	7,029,019 kilograms	January 1, 2000 to December 31, 2000.
Italian-Type Cheese	16,396,083 kilograms	January 1, 2000 to December 31, 2000.
Swiss Cheese with Eye Formation	35,361,386 kilograms	January 1, 2000 to December 31, 2000.
Gruyere Process Cheese	8,008,352 kilograms	January 1, 2000 to December 31, 2000.
Lowfat Cheese	3,374,284 kilograms	January 1, 2000 to December 31, 2000.
NSPF Cheese	51,102,583 kilograms	January 1, 2000 to December 31, 2000.
Peanuts	49,248 mt	April 1, 1999 to March 31, 2000.

QUANTITY BASED SAFEGUARD TRIGGER—Continued

Product	Trigger level	Period
	53,000 mt	April 1, 2000 to March 31, 2001.
Peanut Butter/Paste	21,031 mt	January 1, 2000 to December 31, 2000.
Raw Cane Sugar	2,366,204 mt	October 1, 1999 to September 30, 2000.
	1,945,430 mt	October 1, 2000 to September 30, 2001.
Refined Sugar and Syrups	25,484 mt	October 1, 1999 to September 30, 2000.
	27,058 mt	October 1, 2000 to September 30, 2001.
Blended Syrups	0 mt	October 1, 1999 to September 30, 2000.
	0 mt	October 1, 2000 to September 30, 2001.
Articles Over 65% Sugar	0 mt	October 1, 1999 to September 30, 2000.
	0 mt	October 1, 2000 to September 30, 2001.
Articles Over 10% Sugar	80,282 mt	October 1, 1999 to September 30, 2000.
	80,282 mt	October 1, 2000 to September 30, 2001.
Sweetened Cocoa Powder	2,445 mt	October 1, 1999 to September 30, 2000.
	1,555 mt	October 1, 2000 to September 30, 2001.
Chocolate Crumb	21,252,239 kilograms	January 1, 2000 to December 31, 2000.
Lowfat Chocolate Crumb	176 kilograms	January 1, 2000 to December 31, 2000.
Infant Formula Containing Oligosaccharides	84,751 kilograms	January 1, 2000 to December 31, 2000.
Mixes and Doughs	5,424 mt	October 1, 1999 to September 30, 2000.
	6,064 mt	October 1, 2000 to September 30, 2001.
Mixed Condiments and	253 mt	October 1, 1999 to September 30, 2000.
Seasonings	232 mt	October 1, 2000 to September 30, 2001.
Ice Cream	1,516,320 liters	January 1, 2000 to December 31, 2000.
Animal Feed Containing Milk	1,339,075 kilograms	January 1, 2000 to December 31, 2000.
Short Staple Cotton	17,211,112 kilograms	September 20, 1999 to September 19, 2000.
	5,340,573 kilograms	September 20, 2000 to September 19, 2001.
Harsh or Rough Cotton	0 mt	August 1, 1999 to July 31, 2000.
	0 mt	August 1, 2000 to July 31, 2001.
Medium Staple Cotton	9,664 kilograms	August 1, 1999 to July 31, 2000.
	622,754 kilograms	August 1, 2000 to July 31, 2001.
Extra Long Staple Cotton	32,995 kilograms	August 1, 1999 to July 31, 2000.
	1,482,280 kilograms	August 1, 2000 to July 31, 2001.
Cotton Waste	13,378 kilograms	September 20, 1999 to September 19, 2000.
	0 kilograms	September 20, 2000 to September 19, 2001.
Cotton, Processed, Not Spun	383 kilograms	September 11, 1999 to September 10, 2000.
	798 kilograms	September 11, 2000 to September 10, 2001.

[FR Doc. 00–5681 Filed 3–8–00; 8:45 am]
BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Granite Area Mining Projects; Umatilla National Forest, Grant County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) on a proposed action to approve Proposed Plans of Operation on mining claims located in the Granite Area, within the Granite Creek watershed, a tributary to the North Fork John Day River. The project area is located on the North Folk John Day Ranger District, approximately 34 air miles southeast of Ukiah, Oregon.

The proposed action is a compilation of plans submitted by claimants operating within the analysis area. These plans describe the type of mining operations proposed and how they would be conducted, the type and standard of access routes, the means of transportation to be used, the period during which the proposed mining activity will take place and measures to be taken to meet the requirements for environmental protection. Operations include the exploration and extraction of valuable minerals from placer and lode deposits. Methods range from hand panning to more complex operations utilizing mechanical equipment. The 1990 Land and the Resource Management Plan FEIS for the Umatilla National Forest, as amended, provides overall guidance for management of this area. Some of the operations planned in the proposed action may not be in compliance with this plan.

DATES: Written comments concerning the scope of the analysis should be received on or before April 10, 2000.

ADDRESSES: Send written comments and suggestions to the Responsible Official, Craig Smith-Dixon, North Folk John Day District Ranger, P.O. Box 158, Ukiah, OR 97880.

FOR FURTHER INFORMATION CONTACT: Bob Reed, Project Team Leader, North Fork John Day Ranger District. Phone: (541) 427–3231.

SUPPLEMENTARY INFORMATION: The decision area includes approximately 900 acres of claimed lands within the Umatilla National Forest in Grant County, Oregon. It is within the boundary of the Granite Creek Watershed. The legal description of the decision area is as follows: T8–10S, R34, 35, 35½E, W.M. surveyed. Some proposed activities are within the boundary of the North Folk John Day Wilderness Area.

Gold was discovered in the project area in 1864 and a small gold rush shortly followed. Most of the gold produced in this area was placer gold mined from the gravel and bars of streams. There were also several large producing gold and silver mines. A large-scale dredge operated in many of the area streams in the later 1930's Most of the big mining was over by the 1950's as the economical discoveries were mined out. Exploration continues but no major production is occurring. Most current mining activity consists of small-scale placer operations.

During the past years, several species of fish residing within streams located in or near the project area have been listed as threatened under the

Endangered Species Act. After reviewing the new listings, the Forest Service has determined that current mining operations could significantly affect these fish species. Therefore it is necessary for persons operating in the project area to submit new or modified Plans of Operations to the Forest Service. Under the regulations at 36 CFR 228.4 and 228.5, and because of the potential significance of the effects, these plans must be analyzed in an Environmental Impact Statement.

Mining operations are associated with the extraction of precious metals from placer and lode deposits. A number of different practices are being proposed on the various claims within the analysis area. These may include one or more of the following practices:

Suction Dredging: Portable suction dredges would be used in stream during the period specified by the State of Oregon, generally July 15 to August 15.

Test Pits: Holes are dug either by hand or mechanical equipment to sample sub-surface deposits.

Drilling: Portable drills are used as part of the exploration process to sample sub-surface mineral deposits.

Placer Mining: This includes a wide variety of practices to extract minerals from placer deposits. The techniques include handwork with shovels and pans, small sluice boxes and more complex operations that use mechanical equipment. On the more heavily worked claims backhoes and front end loaders are used for digging, and power trommels for separation and extraction. Water, to varying degrees, is used in all these techniques. Some minor road maintenance and maintenance of existing structures is also planned.

Lode Mining: This includes tunneling or other mechanical methods used to extract lode deposits.

Activities, which would occur in association with mining operation, include mitigation practices such as construction or maintenance of settling ponds, and reclamation activities such as recontouring, seeding, and treatment of noxious weeds.

Preliminary issues include: effects of proposed activities on water quality and the effects of proposed activities on fish habitat and aquatic Threatened, Endangered, and Sensitive species.

The Forest Service will consider a full range of alternatives, including a ''no-action'' alternative in which no mining activities would be approved. The no-action alternative is evaluated in order to establish a baseline condition of existing and future environmental conditions in the project area. Based on the issues gathered through scoping, the action alternatives may vary in the type of operations permitted, the timing of permitted operations and the types of mitigation required. Tentative action alternatives are: the proposed action and an alternative that modifies the proposed plans with additional mitigation to address effects of mining on water quality and fisheries habitat.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). Initial scoping began with the project listing in the 2000 Winter Edition of the Umatilla National Forest's Schedule of Proposed Activities. This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations that may be interested in, or affected by the proposal. This input will be used in preparation of the Draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Considering additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (*i.e.* direct, indirect, and cumulative effects and connected actions).

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available to the public for review by September 1, 2000. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register.** The comment period on the Draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register.** It is important that those interested in the management of the Umatilla National Forest participate at that time. The Final EIS is scheduled to be completed by December 1, 2000. In the Final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or

chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service is the lead agency. Craig Smith-Dixon, District Ranger, is the Responsible Official. As the Responsible Official, he will decide which, if any, of the proposed plans will be implemented. He will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: February 24, 2000.

Craig Smith-Dixon,

District Ranger.

[FR Doc. 00–5726 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan for the White Mountain National Forest; Carroll, Coos, and Grafton Counties, NH and Oxford County, ME

AGENCY: Forest Service, USDA.

ACTION: Notice; Intent to prepare an Environmental Impact Statement.

SUMMARY: The purpose of this notice is to inform the public that the Forest Service intends to prepare an environmental impact statement for revising the White Mountain National Forest Land and Resource Management Plan (Forest Plan) pursuant to 16 U.S.C. 1604(f)(5) and 36 CFR 219.12.

The Forest Plan guides the overall management of the Forest. Six primary decisions are made in the Forest Plan:

1. Forest wide multiple-use goals and objectives (as required by 36 CFR 219.11[b])
2. Forest wide management requirements (36 CFR 219.27)
3. Management area direction (36 CFR 219.11[c])
4. Lands suited and not suited for timber production (36 CFR 219.14, 219.16, 219.21)
5. Monitoring and evaluation requirements (36 CFR 219.11[d])
6. Recommendations to Congress (for example Wilderness recommendation) (36 CFR 219.17)

The purpose for the revision rests in the requirements of the National Forest Management Act and its implementing regulations (U.S.C. 1604[f][5] and 36 CFR 219.10[g]. Forest Plans provide direction for administering the National Forests. Forest Plans are revised every 10 to 15 years. The White Mountain National Forest Plan was approved in 1986. The Forest is nearing the end of the 10–15 year cycle.

The need to revise the Forest Plan is based on changed public expectations, changing agency direction, monitoring and evaluations, and the availability of new information. Specific indicators of the need are: (1) There is growing demand for all recreation uses on the Forest. There is demand for types of recreation uses on the Forest that are not currently being provided; (2) Agency goals and objectives, along with other national guidance for strategic plans and programs, have changed since 1986; (3) Results of monitoring and evaluation suggest the need for revision; and (4) A vast amount of new scientific information has been published since 1986, including technical reports published from research by the Forest Service, as well as universities and organizations that study forest ecosystems and forest management.

The process of revising the Forest Plan will focus on those items that have been identified as most in need of revision. To provide guidance for developing Forest Plan goals and direction the Forest developed a statement describing the role of the Forest in New England, which is basically to manage the White Mountain National Forest under the concept of ecosystem, social and economic sustainability. The issues identified through initial public outreach have been used to identify 23 Revision Topics. The 23 topics are:

1. Air Quality.
2. American Indian Consultation.
3. Biodiversity.
4. Budget and Cost Effectiveness.
5. Commercial Minerals.
6. Environmental Education/Visitor Information.
7. Fire.
8. Heritage Resources.
9. Land Acquisition and Exchange.
10. Monitoring.
11. Recreation Opportunities and Use.
12. Roadless Areas.
13. Roads.
14. Scenery Management.
15. Soil Productivity.
16. Special Uses.
17. Threatened, Endangered, Proposed, and Sensitive Species.
18. Timber Management.
19. Watershed and Aquatic Ecosystems.
20. Wild and Scenic Rivers.
21. Wilderness Management.
22. Wilderness Recommendation.
23. Wildlife Habitat Management.

Additional detail on the Revision Topics is available on request, in the from of the document titled ''Need for Change, Description of Proposal for Revising the White Mountain National Forest''. You are encouraged to review this additional document prior to commenting on the Notice of Intent. You may request the additional information by calling the phone number listed below, by writing or e-mailing to the addresses listed in this notice, or by accessing the Forest web page at www.fs.fed.us/r9/white.

The past thirteen years of Forest Plan implementation and information from new scientific studies have yielded information that was not available when the direction of the existing Forest Plan was developed. We propose to use the new information to update and add management direction for the previously described revision topics.

A range of alternatives will be considered when revising the Forest Plan. The alternatives will address different options to resolve concerns raised as revision topics listed above and to fulfill the purpose and need. A ''no-action alternative'' is required, meaning the management would continue under the existing Forest Plan. Alternatives will provide different ways to address and respond to public issues, management concerns, and resource opportunities identified during the scoping process.

The alternatives will display different mixes of recreation opportunities and experiences. We will examine alternatives that address the public's concerns for less timber harvest, for greater timber harvest, and meeting currently planned harvest levels. The alternatives will display different mixes of wildlife habitats across the forest. The mix will vary by the objectives of the particular alternative, though each alternative will be managed to contain the habitat necessary to maintain viable populations of wildlife species. Management of roadless areas will vary by the objectives of any particular alternatives, physical criteria for evaluating each individual roadless area, and public input. In addition, the alternatives will incorporate a range of Wilderness recommendations.

The environmental analysis and decision-making process will include many opportunities for public participation and comment so that people interested in this proposal may contribute to the final decision. The draft environmental impact statement is tentatively scheduled for release in

September 2001. The final environmental impact statement and decision are scheduled for August 2002.

We are now soliciting comments and suggestions from individuals, state and local governments, American Indians, federal agencies, and organizations on the scope of the analysis to be included in the draft environmental impact statement for the revised Forest Plan (40 CFR 1501.7). To be most useful, your comments should focus on (1) the proposed revision topics, (2) issues that you are concerned about that are not addressed in this notice, and (3) possible alternatives for addressing the 23 revision topics.

We will provide the public with general notices on opportunities to participate through mailings, news releases, and public meetings. In addition to formal opportunities for public comment we will consider received at any time throughout the revision process.

The Forest Service will host a series of meetings to (1) Present and clarify proposed changes to the forest plan; (2) describe ways that individuals can respond to this notice of intent; and (3) accept comments from the public on the proposal for revising the Forest Plan. Forest personnel will be available at the following times and locations to answer questions and accept input about this Notice of Intent.

April 10, 2000, 1:30 p.m. to 7:30 p.m., Holiday Inn, Concord NH.

April 11, 2000, 12:30 p.m. to 6:30 p.m., Radisson Hotel, Chelmsford MA.

April 12, 2000, 1 p.m. to 7 p.m., Rumney Town Hall, Rumney NH.

April 13, 2000, 12:30 p.m. to 6:30 p.m., Evans Notch Ranger District Office, Bethel ME.

April 13, 2000, 12:30 p.m. to 6:30 p.m., Woodstock Town Hall, North Woodstock NH.

April 14, 2000, 12:30 p.m. to 6:30 p.m., Saco Ranger District Office, Conway NH.

April 18, 2000, 1 p.m. to 7 p.m., Androscoggin Ranger District Office, Gorham NH.

Additional information on meeting schedules is available on the White Mt. National Forest web page at www.fs.fed.us/r9/white.

DATES: Comments on this Notice of Intent should be received in writing by May 9, 2000.

ADDRESSES: Send written comments to: Forest Planning, White Mountain National Forest, 719 N. Main St., Laconia, NH 03236. Or direct electronic mail to: forestplan__whitemtn@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Bryan Armel, Forest Planner, at (603) 528–8788. TDD (603) 528–8722. E-mail address: forestplan/r9__whitemtn@fs.fed.us or access the Forest web page at www.fs.fed.us/r9/white.

SUPPLEMENTARY INFORMATION: This section contains more information about the process to revise the Forest Plan for the White Mountain National Forest.

Authorization

On November 14, 1997, the Department of Interior and Related Agencies Appropriations Act of 1998, H.R. 2107 was passed. Language in section 333 of the law specifically prohibits the expenditure or obligation of funds for new revisions of National Forest land managment plans until new final or interim final rules for forest plan revision are published in the **Federal Register.** Later in 1997, the Departments of Commerce, Justice, and State, the Judiciary, and related agencies Appropriations Act of 1998, HR 2267 was passed. Language in section 630 of the law specifically permitted the White Mountain National Forest to proceed with developing its next Forest Plan. This subsequent law allows the White Mountain National Forest to proceed with revision in accordance with 36 CFR 219.10(g).

Availability of Public Comment

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decisions under 36 CFR parts 215 or 217.

Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the FOIA (Freedom of Information Act) permits such confidentiality. Persons requesting such confidentiality should be aware that under FOIA confidentiality may be granted in only very limited circumstances, such as to protect trade secrets.

The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and where the requester is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 90 days.

Release and Review of the Draft EIS

The DEIS (Draft Environmental Impact Statement) is expected to be filed with the EPA (Environmental Protection Agency) and to be available for public comment in the fall of 2001. At that time, the EPA will publish a notice of availability in the **Federal Register**. The comment period on the DEIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, that it is important to give reviews notice of several court rulings related to public participation in the environmental review process. First, reviews of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the review's position and contentions. *Vermont Yankee Nuclear Poser Corp.* v. *NRDS, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviews may wish to refer to the Council of Environmental Quality Regulations for implementing the procedural provision of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official is Robert T. Jacobs, Regional Forester, Eastern Region, 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.

Dated: February 14, 2000.

Robert T. Jacobs

Regional Forester.

[FR Doc. 5864 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by May 8, 2000.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, D.C. 20250–1522. Telephone: (202) 720–9552. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Preloan Procedures and Requirements for Telecommunications Program.

OMB Control Number: 0572–0079.

Type of Request: Reinstatement with change of a previously approved information collection.

Abstract: This program is necessary in order for the Rural Utilities Service (RUS) to determine an applicant's eligibility to borrow from RUS under the terms of the RE Act. This information is also used by RUS to determine that the Government's security for loans made by RUS is reasonably adequate and that the loans will be repaid within the time agreed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 hours per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 8.

Estimated Total Annual Burden on Respondents: 3,621.

Copies of this information collection can be obtained from Bob Turner, Program Development and Regulatory Analysis, at (202) 720–0696.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, D.C. 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 2, 2000.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 00–5640 Filed 3–9–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Great River Energy Pleasant Valley Station, Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of an Environmental Assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is publishing an environmental assessment (EA) for a project proposed by Great River Energy (GRE) of Elk River, Minnesota. The project consists of constructing a natural gas-fired simple cycle, combustion turbine power generation facility in Pleasant Valley Township in Mower County, Minnesota. The project will have a total of three combustion turbine units, two 155 megawatts (MW) units and one 124 MW unit, including a new 345/161 kV substation and other associated transmission facilities. The total electrical output from the facility is expected to range from 434 MW to 526 MW depending upon operating conditions. RUS proposes to provide financial assistance to GRE for this project.

FOR FUTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1414; e-mail: nislam@rus.usda.gov. RUS seeks written comments on the GRE proposal. Written comments should be submitted within 30 days of the publication of this notice to the above address.

SUPPLEMENTARY INFORMATION: GRE proposes to construct the power station in Pleasant Valley Township in Mower County, Minnesota. The primary purpose of the facility is to meet GRE peak electrical load during hot summer weather. Under those conditions the facility's expected output is about 434 MW of power. The generation unit consists of turbines similar to those found in commercial airline engines. The primary fuel will be natural gas and the distillate oil will serve as the back up fuel for the plant. The three units will have a total peak capacity of 526 MW. The generating power station will require approximately 24 acres of land. The preferred site for the generating station is located in the northwest quarter of Section 19, Pleasant Valley Township, Mower County, Minnesota. An alternative site was considered and is located approximately two miles south of the preferred site, in the south of the northwest quarter of Section 31, Pleasant Valley Township, Mower County, Minnesota. The following additional facilities will also be constructed. A 345/161 kV substation will be constructed at the plant site. A short, 345 kV transmission tap line, approximately 500 feet long, will be needed to connect to an existing Byron-Adams 345-kV transmission line. A new 161 kV transmission line, between 5 and 7 miles long, will be built from the plant site to the Sargeant Substation. The existing 69 kV line between the Sargeant Substation and south of the City of Brownsdale will be upgraded to a 161/69 kV line. This section of the line will be approximately 10 miles long. A 161 kV line will be built from Brownsdale to the Austin North Substation in Austin, Minnesota. A number of alternative routes have been considered for this section of the transmission line. Approximately three miles of new high pressure gas pipeline will be built to provide gas supply from the proposed generating station north to an existing gas pipeline. The expected water use is

estimated to be approximately 3.1 million gallons per year.

The EA is available for public review at the headquarters of GRE at 17845 East Highway 10, Elk River, Minnesota 55330–0800 and the RUS at the address provided above in this notice or at the following locations:

- Austin Public Library, 323 4th Avenue, NE, Austin, Minnesota, telephone (507) 433–2391
- Brownsdale Public Library, Brownsdale Community Building, Brownsdale, Minnesota, telephone (507) 567–9951
- Rochester Public Library, 101 2nd Street, SE, Rochester, Minnesota, telephone (507) 285–8022
- Sargeant Community Center, Chestnut Avenue, Sargeant, Minnesota, telephone (507) 584–6885

Questions and comments should be sent to RUS at the address provided in this notice. RUS will accept questions and comments on the EA for 30 days from the date of publication of this notice.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR Part 1794, Environmental Policies and Procedures.

Dated: March 3, 2000.

Mark S. Plank,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 00–5642 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Dekehtik Diesel Electric Plant on the Island of Pohnpei, Pohnpei Utilities Corporation, Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and RUS Environmental Polices and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Pohnpei Utilities Corporation (PUC) of Kolonia, Pohnpei, Federated States of Micronesia. Pohnpei is the largest state in the Federated States of Micronesia. The proposed project consists of constructing a 6.5-megawatt diesel electric generating plant at Dekehtik on the Island of Pohnpei. The purpose of the project is to provide power for the residents of the Island. RUS proposes to provide financial assistance to PUC for the project.

RUS has concluded that the impacts from the proposed project would not be significant and that the proposed action is not a major federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, Stop 1571, Engineering and Environmental Staff, RUS, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–1414. His e-mail address is nislam@rus.usda.gov. Information is also available from Mr. Marcelino Actouka, General Manager, PUC, P.O. Box C, Kolonia, Pohnpei FM96941, telephone (691) 320–2374 and Mr. Peter Howard, Executive Vice President, Oceanic Companies, Inc., 1287 Kalani Street, Suite 203, Honolulu, Hawaii 966817–4961, telephone (808) 874–0207.

SUPPLEMENTARY INFORMATION: RUS, in accordance with its environmental policies and procedures, required that PUC prepare an Environmental Report (ER) reflecting the potential impacts of the proposed facilities. The ER, which includes input from federal, state, and local agencies, has been reviewed and accepted as RUS' Environmental Assessment (EA) for the project in accordance with 7 CFR 1794.41. RUS and the PUC published notices of the availability of the EA and solicited public comments per 7 CFR 1794.42.

RUS has received the following comments on the proposed project: A letter from the U.S. Embassy on Kolonia, dated January 4, 2000, addressed the use of the present solid waste dump site as the location of the new power plant with no arrangements for relocating the solid waste facility. Region 9 of the U.S. Environmental Protection Agency (EPA) commented on the disposal and characterization of excavated material, stabilization of the present dump site, and accidental oil spills. Based on the information contained in the ER which RUS accepted as its EA, the responses of the Oceanic Companies, Inc., documented in a letter, dated February 16, 2000, to EPA Region 9, and the PUC commitments to follow mitigation, RUS does not believe that construction and operation of the Dekehtik Generating Station will result in any significant impact to the human environment.

Copies of the EA and FONSI can be reviewed at the headquarters of RUS and the headquarters of PUC and Oceanic Companies, Inc., at the addresses provided in this notice.

Dated: March 1, 2000.

Alex M. Cockey

Acting Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 00–5641 Filed 3–8–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Estimates of the Voting Age Population for 1999

AGENCY: Office of the Secretary, Commerce.

ACTION: General notice announcing population estimates.

SUMMARY: This notice announces the voting age population estimates, as of July 1, 1999, for each state and the District of Columbia. We are giving this notice in accordance with the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e).

FOR FURTHER INFORMATION CONTACT: John F. Long, Chief, Population Division, Bureau of the Census, Department of Commerce, Room 2011, Federal Building 3, Washington, DC 20233, telephone 301–457–2071.

SUPPLEMENTARY INFORMATION: Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 1999, for each state and the District of Columbia are as shown in the following table.

ESTIMATE OF THE POPULATION OF VOTING AGE FOR EACH STATE AND DISTRICT OF COLUMBIA: JULY 1, 1999

[In thousands]

Area	Population 18 and over
United States	202,491
Alabama	3,304
Alaska	423
Arizona	3,444
Arkansas	1,891
California	24,222

ESTIMATE OF THE POPULATION OF VOTING AGE FOR EACH STATE AND DISTRICT OF COLUMBIA: JULY 1, 1999—Continued

[In thousands]

Area	Population 18 and over
Colorado	2,991
Connecticut	2,454
Delaware	571
District of Columbia	424
Florida	11,541
Georgia	5,731
Hawaii	896
Idaho	901
Illinois	8,947
Indiana	4,414
Iowa	2,150
Kansas	1,955
Kentucky	2,995
Louisiana	3,182
Maine	963
Maryland	3,862
Massachusetts	4,707
Michigan	7,303
Minnesota	3,504
Mississippi	2,016
Missouri	4,069
Montana	659
Nebraska	1,222
Nevada	1,318
New Hampshire	897
New Jersey	6,140
New Mexico	1,244
New York	13,756
North Carolina	5,710
North Dakota	474
Ohio	8,413
Oklahoma	2,476
Oregon	2,489
Pennsylvania	9,141
Rhode Island	750
South Carolina	2,930
South Dakota	535
Tennessee	4,143
Texas	14,325
Utah	1,422
Vermont	454
Virginia	5,208
Washington	4,270
West Virginia	1,403
Wisconsin	3,902
Wyoming	353

I have certified these counts to the Federal Election Commission.

Dated: February 28, 2000.

William M. Daley,

Secretary, Department of Commerce.

[FR Doc. 00–5593 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–851, A–791–808]

Preliminary Determinations of Critical Circumstances: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Valerie Ellis at (202) 482-0631 or 482–2336, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (April 1999).

Background

On December 14, 1999, the Department published the preliminary affirmative determinations in the antidumping duty investigations on certain large diameter carbon and alloy seamless standard, line and pressure pipe from Japan and certain small diameter carbon and alloy seamless standard, line and pressure pipe from Japan and the Republic of South Africa, 64 FR 69718. On January 31, 2000, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of small diameter carbon and alloy seamless standard, line and pressure pipe (seamless pipe) from Japan and South Africa.

Critical Circumstances

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.''

Section 351.206(i) of the Department's regulations defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

Japan

Kawasaki, Nippon and Sumitomo

Because we are not aware of any antidumping order in any country on seamless pipe from Japan, we do not find that a reasonable basis exists to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. Therefore, we must look to the second criterion for determining importer knowledge of dumping.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the seamless pipe at less than fair value, the Department's normal practice is to consider margins of 25 percent or more for export price (''EP'') sales sufficient to impute knowledge of dumping. *See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China (PRC Plate)*, 62 FR 31972, 31978 (June 11, 1997). In the instant case, the mandatory respondents, Kawasaki Steel Corporation (Kawasaki), Nippon Steel Corporation (Nippon) and Sumitomo Metal Industries (Sumitomo) did not respond to the Department's questionnaire and we have applied, as adverse facts available, the highest of

the dumping margins presented in the petition and corroborated by the Department. This is consistent with section 776 of the Act and with Department practice (*see Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan* (*Vector Supercomputers*), 62 FR 45623 (August 28, 1997)). Kawasaki, Nippon and Sumitomo's assigned dumping margins of 106.07 percent are greater than 25 percent. Therefore, we have imputed knowledge of dumping to importers of subject merchandise from these companies.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. In this case, the ITC has found that a reasonable indication of present material injury due to dumping exists for all identified countries. *See Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania and South Africa* (*ITC Preliminary Determination*), 64 FR 46953 (August 27, 1999). As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports of subject merchandise from Japan.

In determining whether there are ''massive imports'' over a ''relatively short period,'' the Department normally compares the import volume of the subject merchandise for three months immediately preceding and following the filing of the petition. Imports normally will be considered massive when imports have increased by 15 percent or more during this ''relatively short period.''

Because we do not have verifiable data from the three uncooperative Japanese companies, the Department must base its ''massive imports'' determination as to these companies on the facts available, pursuant to section 776(a) of the Act [1]. Accordingly, we examined U.S. Customs data [2] on imports of seamless pipe from Japan for February through June 1999 (the five months preceding the June 30, 1999, filing of the petition) and from July through November (the five months following the filing of the petition). [3] We found, however, that these data are not producer specific and do not permit the Department to ascertain the import volumes for any individual company that failed to respond to the Department's questionnaire. Because these companies' failed to cooperate by not acting to the best of their ability to respond to the Department's questionnaires, we may make an adverse inference in selecting the facts available. Therefore, consistent with Department practice, we have adversely inferred, as facts available, that there were massive imports from Kawasaki, Nippon and Sumitomo over a relatively short period. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan* (*Collated Roofing Nails From Taiwan*), 62 FR 51427 (October 1, 1997).

Based on our determination that there is a reasonable basis to believe or suspect that importers knew or should have known that exporters Kawasaki, Nippon and Sumitomo were selling seamless pipe from Japan at less than fair value, that there was likely to be material injury by reason of such dumped imports, and that there have been massive imports of seamless pipe from these producers over a relatively short period, we preliminarily determine that critical circumstances exist for imports from Japan of seamless pipe produced by Kawasaki, Nippon and Sumitomo.

All Other Exporters from Japan

In regard to the ''all others'' category, it is the Department's normal practice to conduct its critical circumstances analysis based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey (Rebars from Turkey),* 62 FR 9737, 9741 (March 4, 1997). In *Rebars from Turkey,* the Department determined that because it found critical circumstances existed for three out of the four companies investigated, critical circumstances also existed for companies covered by the ''all others'' rate. However, in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan* (*Stainless Steel from Japan*), 64 FR 30574 (June 8, 1999), the Department did not extend its affirmative critical circumstances findings to the ''all others'' categories while finding affirmative critical circumstances for four of the five respondents, because the affirmative determinations were based on adverse facts available.

Consistent with *Stainless Steel from Japan,* we believe it is appropriate to apply the traditional critical circumstances criteria to the ''all others'' category. *Id.* First, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the seamless pipe at less than fair value, we look to the ''all others'' rate, which is based, in the instant case, on facts available. The dumping margin for the ''all others'' category in the instant case, 70.43 percent, exceeds the 25 percent threshold necessary to impute knowledge of dumping. Second, based on the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from the dumped merchandise.

Finally, with respect to massive imports, we are unable to base our determination on our findings for the mandatory respondents, because our determinations for all of the respondents were based on facts available. We have not inferred, as facts available, that massive imports exist for ''all others'' because, unlike Kawasaki, Nippon and Sumitomo, the ''all others'' companies have not failed to cooperate in this investigation. Therefore, an adverse inference with respect to shipment levels by the ''all others'' companies is not appropriate. Instead, consistent with the approach taken in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan* (*Hot-Rolled Steel from Japan*), 64 FR 24239 (May 6, 1999) and *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand* (*Cold-Rolled Steel from Japan*) 65 FR 5220, 5227 (February 4, 2000), we examined U.S. Customs data on overall imports from Japan for the five months preceding and the five months following the filing of the petition in order to see if we could ascertain whether an increase in

[1] Because the three respondents did not respond to the questionnaire, we considered them non-cooperating respondents and did not request monthly shipment data from these companies.

[2] IM–145 import statistics.

[3] As stated in *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia* (64 FR 73164, December 29, 1999), the Department's practice is to use the longest period for which information is available from the month that the petition was submitted through the date of the preliminary determination.

shipments of greater than 15 percent or more occurred within a relatively short period following the point at which importers had reason to believe that a proceeding was likely. Information on the record indicates that these data cover numerous HTS categories that include merchandise other than subject merchandise. Therefore, we cannot rely on these data in determining whether there were massive imports for the ''all others'' category.

Based on our determination that massive imports of seamless pipe from the producers included in the ''all others'' category did not occur and, consequently, that the third criterion necessary for determining affirmative critical circumstances has not been met, we have preliminarily determined that critical circumstances do not exist for imports from Japan of seamless pipe for companies in the ''all-others'' category.

South Africa

Iscor

We are not aware of any antidumping order in any country on seamless pipe from South Africa. Therefore, we do not find that a reasonable basis exists to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. As a result, we must look to the second criterion for determining importer knowledge of dumping.

As explained in *PRC Plate,* the Department's normal practice is to consider margins of 25 percent or more on EP sales sufficient to impute knowledge of dumping. In this case, for the sole mandatory respondent, Iscor, which did not respond to the Department's questionnaire, we have applied, as adverse facts available, the highest of the dumping margins presented in the petition and corroborated by the Department. This is consistent with section 776 of the Act and with our practice as outlined in *Vector Supercomputers.* Because Iscor's assigned dumping margin of 43.51 percent is greater than 25 percent, we have imputed knowledge of dumping to importers of subject merchandise from Iscor.

Regarding the likelihood of material injury, for the same reasons stated above for Japan, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports of subject merchandise from Iscor. *See ITC Preliminary Determination.*

Finally, regarding ''massive imports'', because we had no company-specific data, we examined U.S. Customs data on imports of seamless pipe from South Africa in order to determine whether the data reasonably precludes a finding of an increase in shipments of 15 percent or more within a relatively short period for this company. Because Iscor is the only known producer of the subject merchandise, it can be inferred that any increase shown in the Customs data reflects an increase in Iscor's shipments. We examined the same five-month periods described above for Japan and found that there was an increase in shipments of 18.6 percent. Consistent with Department practice, because the Customs data does not preclude the existence of a massive increase in shipments by Iscor (and indeed suggests such an increase), we have inferred, as facts available, that there were massive imports from Iscor over a relatively short period. *See, e.g., Collated Roofing Nails From Taiwan.*

Based on our determination that there is a reasonable basis to believe or suspect that importers knew or should have known that Iscor was selling seamless pipe from South Africa at less than fair value, that there was likely to be material injury by reason of such dumped imports, and that there have been massive imports of seamless pipe from this producer over a relatively short period, we have preliminarily determined that critical circumstances exist for imports from South Africa of seamless pipe produced by Iscor.

All Other Exporters From South Africa

In regard to the ''all others''' category, we have followed the same analysis outlined above in the discussion for the ''All Others Exporters from Japan.'' However, since Iscor is currently the only known exporter of seamless pipe in South Africa, we have determined that the Customs information available indicates no massive imports for the ''all others'' category. As a result, because the massive imports criterion necessary to find critical circumstances has not been met with respect to firms other than Iscor, the Department finds that critical circumstances do not exist for the ''all others'' category in the South African investigation.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, the Department will direct the Customs Service to suspend liquidation of all entries of seamless pipe from the Japan produced by Kawasaki, Nippon and Sumitomo and all entries of seamless pipe from South Africa produced by Iscor, that are entered, or withdrawn from warehouse, for consumption on or after September 15, 1999, which is 90 days prior to the date of publication in the **Federal Register** of our preliminary determinations of sales at less than fair value. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determinations of sales at less than fair value published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice. The margins in the preliminary determinations are as follows:

	Percent
Japan:	
Nippon Steel Corporation	106.07
Kawasaki Steel Corporation	106.07
Sumitomo Metal Industries ...	106.07
South Africa: Iscor Ltd.	43.51

Final Critical Circumstances Determinations

We will make final critical circumstances determinations when we issue our final determinations in the less-than-fair-value investigations, which are due to be made no later than April 27, 2000.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations.

This notice is published pursuant to section 777(i) of the Act.

Dated: March 1, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5803 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–428–812)

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany: Final Results of Changed Circumstances Review and Revocation of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 18, 2000, the Department of Commerce (the Department) published in the **Federal Register** a notice of recission of countervailing duty administrative review and initiation and preliminary

results of changed circumstances review and intent to revoke the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from Germany (65 FR 2582). We are now revoking this order, retroactive to January 1, 1998, based on the fact that the domestic producers are no longer interested in its continued maintenance.

EFFECTIVE DATE: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Enforcement Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (April 1999).

Background

On November 24, 1999, Ispat Inland Inc. (Ispat) and Republic Technologies International (RTI) (the successors to the petitioners in this proceeding) and domestic producer Birmingham Steel Corporation (BSC) (collectively, the domestic producers) requested that the Department conduct a changed circumstances review to revoke the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from Germany retroactive to January 1, 1998. They stated that circumstances have changed such that they no longer have an interest in maintaining the countervailing duty order. They also stated that they represent approximately 85 to 90 percent of the domestic production of the like product to which the order pertains. On January 5, 2000, the domestic producers submitted a letter withdrawing their request for the administrative review of the period January 1, 1998, through December 31, 1998.

On January 7, 2000, we preliminarily determined that the affirmative statement of no interest by the domestic producers constituted changed circumstances sufficient to warrant revocation of this order. Consequently, on January 18, 2000, we published a notice of recission of countervailing duty administrative review and initiation and preliminary results of changed circumstances review and intent to revoke the countervailing duty order (65 FR 2581). We invited interested parties to comment on the preliminary results of this changed circumstances review and intent to revoke order. We received no comments.

Scope of Review

The products covered are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1(f)), except steels classified as other alloy steels by reasons of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00; 7213.31.60.00; 7213.39.00.30; 7213.39.00.60; 7213.39.00.90; 7213.91.30.00; 7213.91.45.00; 7213.91.60.00; 7213.99.00; 7214.40.00.10, 7214.40.00.30, 7214.40.00.50; 7214.50.00.10; 7214.50.00.30, 7214.50.00.50; 7214.60.00.10; 7214.60.00.30; 7214.60.00.50; 7214.91.00; 7214.99.00; 7228.30.80.00; and 7228.30.80.50. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Final Results of Changed Circumstances Review and Revocation of Order

Pursuant to section 751(d)(1) of the Act, the Department may revoke, in whole or in part, a countervailing duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 351.216(d) require the Department to conduct a changed circumstances review in accordance with 19 CFR 351.221 if it decides that changed circumstances sufficient to warrant a review exist. Section 782(h) of the Act and 19 CFR 351.222(g)(1)(i) provide further that the Department may revoke an order, in whole or in part, if it concludes that the order under review is no longer of interest to producers accounting for substantially all of the production of the domestic like product.

Ispat, RTI, and BSC are domestic interested parties as defined by section 771(9)(E) of the Act and 19 CFR 351.102(b) and represent substantially all of the production of the domestic like product. Based on the affirmative statement by the domestic producers of no interest in the continued application of the order and the fact that no interested parties objected to our preliminary results of this review, we determine that there are changed circumstances sufficient to warrant revocation of the order. Therefore, the Department is revoking the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from Germany, retroactive to January 1, 1998.

In accordance with 19 CFR 351.222(g)(4), we will instruct the Customs Service to end the suspension of liquidation and to refund any estimated countervailing duties collected for all unliquidated entries of certain hot-rolled lead and bismuth carbon steel products from Germany on or after, January 1, 1998. We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act.

This changed circumstances review, revocation of the countervailing duty order, and notice are in accordance with sections 751(b), 751(d) and 782(h) of the Act and 19 CFR 351.216 and 351.222.

Dated: March 1, 2000.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–5804 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On February 29, 2000, Stelco, Inc. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping duty administrative review determination made by the International Trade Administration, respecting Certain Corrosion-Resistant Carbon Steel Flat Products from Canada. This determination was published in the **Federal Register** (65 FR 9243) on February 24, 2000. The NAFTA Secretariat has assigned Case Number USA–CDA–00–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel* Reviews (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on February 29, 2000, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is March 30, 2000);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is April 14, 2000); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: March 1, 2000.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 00–5609 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On February 29, 2000, Stelco, Inc. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping duty administrative review determination made by the International Trade Administration, respecting Certain Cut-to-Length Carbon Steel Plate from Canada. This determination was published in the **Federal Register** (65 FR 9243) on February 24, 2000. The NAFTA Secretariat has assigned Case Number USA-CDA–00–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

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The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is March 30, 2000);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is April 14, 2000); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: March 1, 2000.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 00–5608 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021600B]

Notice of Availability of Final Stock Assessment Reports

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

ACTION: Notice of completion and availability of revised marine mammal stock assessment reports; response to comments.

SUMMARY: NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs). The 1999 revisions of the reports are now complete, and copies of the final 1999 SARs are available to the public.

ADDRESSES: Send requests for printed copies of reports to: Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

Copies of the regional reports may also be requested from:

Anita Lopez, Alaska Fisheries Science Center (F/AKC), NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115–0070 (Alaska);

Richard Merrick, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543 (Atlantic); and

Tim Price, Southwest Regional Office (F/SWO3), NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213 (Pacific).

FOR FURTHER INFORMATION CONTACT: Thomas Eagle, Office of Protected Resources, NMFS, at (301) 713–2322, ext. 105, Anita Lopez (206) 526–4045, regarding Alaska regional stock assessments; Tim Price, (562) 980–4020, regarding Pacific regional stock assessments; or Richard Merrick, (508) 495–2311, or Steven Swartz, (305) 361–4487, regarding Atlantic regional stock assessments.

SUPPLEMENTARY INFORMATION: Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) required NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals that occurs in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA also requires NMFS and FWS to review these reports annually, or every 3 years for non-strategic stocks, and revise them if the status of the stock has changed or can be more accurately determined. These updated reports represent the 1999 revisions of reports for which NMFS is responsible.

Draft 1999 SARs were made available for a 90-day public review and comment period on May 28, 1999 (64 FR 29000). Prior to release for public review and comment, NMFS subjected the draft reports to internal technical review and to review by regional Scientific Review Groups established under the MMPA. Following the close of the comment period, NMFS revised the reports as needed to prepare final 1999 SARs. Printed copies may be obtained by request (see **ADDRESSES**).

Response to Comments

NMFS received one comment on the 1999 draft SARs. The affected report was revised to reflect the following response.

Comment: The draft report ignores a significant new analysis of Western North Atlantic right whale mortality and population growth, recently published in the Proceedings of the National Academy of Sciences.

Response: The findings regarding right whale survival in the referenced article were incorporated into the final 1999 right whale SAR. Specifically, the decline in crude survival probability is referenced in the Current Population Trend, and Potential Biological Removal sections. Further, these findings will be incorporated into future revisions of the right whale report and used in the estimation of maximum net productivity for this stock.

Dated: March 2, 2000.

Art Jeffers,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–5782 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022900D]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on March 22 and 23, 2000, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, March 22, 2000, beginning at 9 a.m., and Thursday, March 23, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Tavern on the Harbor, 30 Western Avenue, Gloucester, MA 01930; telephone (978) 283–4200. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Wednesday, March 22, 2000

After introductions, the meeting will begin with reports on recent activities from the Council Chairman, Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission.

Following reports, there will be consideration and approval of a schedule of Council management actions for 2000, including approval of modifications to the joint fishery management plan development process. The Research Steering Committee Chairman will review recent committee activities including the development of groundfish research priorities, and cooperative efforts with NMFS to fund collaborative research through recent Congressional appropriations. The Spiny Dogfish Committee will review the results of the joint Mid-Atlantic Fishery Management Council (MAFMC)/New England Fishery Management Council (NEFMC) Scientific and Statistical Committee meeting concerning the 2000–2001 annual specifications for the spiny dogfish fishery, the conclusions of the MAFMC/NEFMC Joint Spiny Dogfish Committee meeting, and the subsequent recommendations of the full MAFMC on the management of spiny dogfish. Following receipt of this information, the Council will consider and approve

its response to this management issue. The Sea Scallop Committee will review comments provided at the recent Sea Scallop FMP Amendment 10 scoping hearings and approve the range of issues to be addressed in that amendment.

Announcement of Experimental Fishery Application

The NMFS Regional Administrator will discuss during the reports portion of the agenda the receipt of an experimental fishing proposal submitted by the Maine Department of Marine Resources (MEDMR) to conduct an experimental fishery for Atlantic halibut. This announcement serves as public notification of the experimental fishing proposal. Specifically, the Regional Administrator is seeking comment on the provisions of the experimental fishing proposal in relation to the goals of management measures for Atlantic halibut contained in the Northeast Multispecies Fishery Management Plan (FMP).

The objective of the proposed experiment is to contribute to the protection and rebuilding of Atlantic halibut by enabling the collection and analyses of basic biological and ecological data essential for the long-term sustainable management of Atlantic halibut. The proposed experiment would collect data on the distribution, relative abundance, migration, stock definition, mortality rates, stock size, yield and other significant biological reference points for Atlantic halibut. The proposed experiment would also collect data on age and growth, size, sex composition, and rate of onset of sexual maturity.

The experimental fishery has been proposed for April 15 through June 15 of each year through 2003 in the northern portion of the Gulf of Maine. The proposed experiment would allow eight vessels, selected by MEDMR, to participate and land up to six Atlantic halibut, 36 inches (66 cm) or greater, per day, for up to 60 days during each year. Halibut caught over the daily limit and those under 36 inches (66 cm) would be tagged and released. Participating vessel owners would be required to be trained in sampling scales, otoliths, stomachs and gonads. Vessel owners would also be required to accommodate observers, use tub trawl gear no longer than 100 hooks, use 1500 circle hooks only, and report catch and other relevant information on special logbooks devised by MEDMR.

Thursday, March 23, 2000

The second day of the meeting will begin with a discussion and possible approval of recommended options for managing fishing capacity in New England fisheries. The Council also may agree to forward approved options to the appropriate oversight committees for further consideration. During the Groundfish Committee Report, the Council will provide guidance to the committee on objectives developed for Amendment 13 to the Northeast Multispecies FMP. Additional input will focus on the resolution of overfishing definition issues and stock rebuilding timelines, alternatives developed to date by the committee and other issues identified for inclusion in the amendment. Northeast Fisheries Science Center staff will then present a report on Stock Definition of New England groundfish. Prior to addressing any other outstanding business, the Red Crab and Herring Committees will each brief the Council on the recent scoping hearings.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Documents pertaining to framework adjustment actions are available for public review 7 days prior to a final vote by the Council. Copies of the documents may be obtained from the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5781 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 000302057–0057–01]

Request for Comments on Patent Law Treaty

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of request for public comments.

SUMMARY: A Diplomatic Conference for the adoption of the draft Patent Law Treaty will be held at the World Intellectual Property Organization in Geneva, Switzerland, from May 11 through June 2, 2000. The Patent and Trademark Office is seeking comments to obtain views of the public on this effort to simplify the formal requirements associated with patent applications and patents and the consequent changes to United States law and practice. Comments may be offered on any aspect of this effort.

DATES: All comments are due by April 21, 2000.

ADDRESSES: Persons wishing to offer written comments should address those comments to the Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231, marked to the attention of Lois E. Boland. Comments may also be submitted by facsimile transmission to (703) 305–8885 or by electronic mail through the Internet to lois.boland@uspto.gov. All comments will be maintained for public inspection in Room 902 of Crystal Park II, at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Lois E. Boland by telephone at (703) 305–9300, by fax at (703) 305–8885 or by mail marked to her attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

1. Background

Since 1995, the United States has been involved in an effort, carried out under the auspices of the World Intellectual Property Organization, to reduce the formal requirements associated with patent applications and patents in the different countries of the world. This effort has involved five sessions of the Committee of Experts on the Patent Law Treaty and three sessions of its successor, the Standing Committee on the Law of Patents. The objective of the meetings has been to develop a Basic Proposal, consisting of articles and regulations, which will

minimize the formal requirements associated with patent applications and patents. Upon adoption, these articles and rules will simplify the formal obligations and reduce associated costs for patent applicants and owners of patents in obtaining and preserving their rights in inventions in many countries of the world. The Diplomatic Conference to conclude this effort will take place in Geneva, Switzerland, from May 11 through June 2, 2000.

The texts of the Basic Proposal, notes on the Basic Proposal and other documents relating to the Diplomatic Conference are available via WIPO's web site for the Standing Committee on the Law of Patents at http://www.wipo.int/scp.

The United States Patent and Trademark Office (USPTO), leading the negotiations for the United States, is interested in assessing support for the effort and in obtaining comprehensive comments on the particulars of the Basic Proposal. Prior to the previous meetings of the Standing Committee and its predecessor, the Committee of Experts, the USPTO informally solicited and received comments on the then-current drafts of the articles, rules and notes. Additionally, on October 22, 1997, before the fifth session of the Committee of Experts, the USPTO formally solicited comments on the effort via a **Federal Register** notice. 62 FR 54836. In light of the upcoming conclusion of this effort, the USPTO desires to ensure that the text of the Basic Proposal for the Treaty is disseminated as widely as possible and that the opportunity to provide comments is correspondingly comprehensive.

Written comments may be offered on any aspect of the Basic Proposal, notes or expected implementation in the United States or elsewhere. Comments are also solicited on the expected benefits to patent applicants and patentees throughout the world of the conclusion and implementation of this Treaty. Comments are also welcome on the following specific issues:

—The substantive and ''form or contents'' distinctions made in Articles 2 and 6, respectively, that serve to define the freedom of Contracting Parties to impose requirements relating to patent applications and patents;

—The filing date provision in Article 5 and the effect of the ''no later than'' clause, included in brackets in the Basic Proposal, on the ability of Contracting Parties to be more liberal both for basic filing date issues in Article 5(1) and for missing part-type issues in Article 5(6);

—The reference filing provision in Article 5(7);

—The evidentiary limitation imposed upon Contracting Parties in Article 6(6);

—The exemptions from the ability of a Contracting Party to mandate representation before the Office of that Contracting Party in Article 7(2) and Rule 7(1), with particular reference to the bracketed provisions;

—The application of Article 12 and related Regulations to pending applications and to patents in force on the date the Treaty binds a Contracting Party even where the failure to comply with a time limit occurred prior to that date, as set forth in the bracketed language in Article 21(1)(a); and

—The exceptions available to Contracting Parties for Article 11—Relief in Respect of Time Limits and Article 12—Reinstatement of Rights found in Rule 12(5) and Rule 13(3), respectively.

2. Brief Summary of the Draft Treaty

The Basic Proposal consists of a draft of the Patent Law Treaty (PT/DC/3) and a draft of the Regulations under the Patent Law Treaty (PT/DC/4). Bracketed text, other than for paragraph headings, is not part of the Basic Proposal; it is included in the Basic Proposal for convenience and as an indication of issues for which resolution is expected at the Diplomatic Conference. Explanatory notes on the provisions of the draft Treaty and Regulations are contained in document PT/DC/5. While the notes are not part of the Basic Proposal, they will be published by WIPO with the text of the Treaty upon adoption of the Treaty. The text of the Basic Proposal includes 26 articles and 21 rules. A brief summary of selected articles and significant associated rules follows. To the extent that a given article is not summarized, it is considered to be self-explanatory. Insofar as this effort is focused upon and limited to formal matters associated with patent applications and patents, the USPTO expects that, upon implementation, changes to our patent law would be minimal. However, to the extent the need for any such change has been identified for a given draft article or rule, it is noted below. This discussion is intended, only, to highlight various articles and rules; it is not intended as a comprehensive treatment of the draft texts. The draft texts should be consulted for a complete understanding of the effort that is under way.

Article 1—Abbreviated Expressions—This article provides definitions for terms used throughout the text of the draft articles and rules.

Article 2—General Principles—Paragraphs (1) and (2) of this article are included for the avoidance of doubt. With regard to paragraph (1), it should be noted that the flexibility of a Contracting Party is limited in the context of Article 5, the filing date provision. Paragraph (2) is important to emphasize that the Treaty and regulations cannot be construed to limit the freedom of Contracting Parties concerning substantive law relating to patents. This latter issue also arises in the context of Article 6 where the ''form or contents'' requirements of the Patent Cooperation Treaty are, except as otherwise provided in the Treaty and regulations, incorporated as the maximum formal or non-substantive, requirements to which a Contracting Party may require compliance.

Article 3—Applications and Patents to Which the Treaty Applies—This article defines the scope of the Treaty by virtue of the types of applications and patents that are encompassed by its terms. As mentioned above, the issue of the application of the Treaty to existing applications and patents, covered in Article 21, should also be noted, especially concerning the bracketed provision in Article 21(1)(b).

Article 4—National Security—This article preserves the right of Contracting Parties to apply measures deemed necessary for the preservation of national security. A similar provision appears in PCT Article 27(8).

Article 5—Filing Date—This article is viewed by the United States as one of the more important features of the Basic Proposal. It mandates that a Contracting Party must provide a filing date for an application as of the date on which its Office has received the following elements:

(i) An indication that submitted elements are intended to be an application;

(ii) Indications allowing the identity of the applicant to be established or allowing the applicant to be contacted; and

(iii) A description.

This filing date requirement is fairly minimal and would greatly simplify the conditions imposed upon the grant of filing dates to patent applications throughout the world. Note that this article would mandate the acceptance, for filing date purposes, of patent applications in any language, subject to the furnishing of later translations. The USPTO has supported this article, with the knowledge that our claim requirement, for filing date purposes, in section 111(a) of title 35, United States

Code, would have to be deleted. Note that such a requirement is not included for provisional applications filed under section 111(b) of title 35, United States Code. The United States has also supported the retention of the bracketed phrase ''no later than'' throughout this article as it will provide Offices needed flexibility on filing date and missing part issues.

Article 6—Application—This article is another of the more important features of this effort. It mandates that no Contracting Party may impose any requirement relating to the form or contents of an application which is different from or additional to any requirement applicable under the Patent Cooperation Treaty (PCT) in respect of international applications or those requirements relating to form or contents, compliance with which may be required once national processing has begun. In essence, this article states that, except as otherwise provided, if an applicant submits an application to a national office that complies with the requirements of the PCT, that national office can impose no different or additional form or contents requirements on that national application. Of course, as Article 2(1) makes clear, Contracting Parties would be free to impose requirements that are more favorable, from an applicant's perspective, than this Treaty or the PCT. Of note, the incorporation of the ''form or contents'' requirements from the PCT into this article would mandate the application of the PCT unity of invention standard for all national applications. The USPTO has taken exception to this view insofar as unity of invention is considered to be a substantive matter that is outside the scope of this effort. Nevertheless, Article 22(1) would permit the United States to take a reservation on this issue.

Article 7—Representation—This article addresses requirements regarding representation, mandatory representation and appointment of representatives. Importantly, Article 7(2) provides that Contracting Parties may not mandate representation for filing date purposes, for the payment of maintenance fees or notifications relating thereto. Certain bracketed provisions are also included that would have the effect, if adopted, of expanding the exceptions to mandatory representation, including: any procedure referred to in the filing date provision (Article 5), the payment of fees, the filing of translations and any other procedure as prescribed in the regulations. The United States has consistently supported maximizing the exceptions in this article and Rule 7(1).

Article 8—Communications; Addresses—This article provides the basis upon which Contracting Parties may impose requirements relating to the form, format and means of filing of communications. Note that paragraph (1)(d) mandates that Contracting Parties must, even if they eventually and exclusively adopt electronic filing, accept the filing of communications on paper for the purpose of complying with a time limit. This article also addresses signature issues in paragraph (4). Note Rules 8 through 11 for details regarding these issues.

Article 9—Notifications—This article allocates burdens relating to the sufficiency of notification and the provision of contact information among Contracting Parties and prospective recipients of notifications.

Article 10—Validity of Patent; Revocation—This article, in paragraph (1), mandates that once a patent has been granted, it may not be revoked or invalidated on the ground of non-compliance with certain formal requirements enunciated in Article 6. In paragraph (2), the obligation to provide at least one opportunity to make observations on intended revocation or invalidation is mandated.

Article 11—Relief in Respect of Time Limits—This article, with Rule 12, requires that the Offices of all Contracting Parties must provide either extensions of time limits (similar to practices in the USPTO under 37 CFR 1.136) or continued processing (similar to practices provided for in the context of the European Patent Convention) for time limits fixed by the Office. This article and the associated rule do not necessarily apply to time limits that are not fixed by the Office, in particular, time limits set by national law. The possible exceptions to the requirements of this article that are set forth in Rule 12(5) should be noted.

Article 12—Re-instatement of Rights After a Finding of Due Care or Unintentionality by the Office—This article, with Rule 13, requires that all Contracting Parties must provide for the re-instatement of rights where an applicant or owner has failed to comply with a time limit and that failure has the direct consequence of causing a loss of rights with respect to an application or patent. In the United States, the practice that is embraced by this article is found in our revival procedures under 37 CFR 1.137. The possible exceptions to the requirements of this article that are set forth in Rule 13(3) should be noted.

Article 13—Correction or Addition of Priority Claim; Restoration of Priority Right—Paragraph (1) provides for the correction or addition of a priority claim to an earlier application where a subsequent application is timely filed. Paragraph (2) provides for the restoration of the priority right where a subsequent application is filed after the expiration of the priority period. The United States currently permits correction and late claiming of priority and supports the concept of accepting the delayed filing of a subsequent application. The acceptance of delayed filing of a subsequent application would require an amendment to section 119 of title 35, United States Code.

Article 14—Regulations—This article provides a basis for all matters which the Treaty expressly provides as being ''prescribed in the Regulations,'' for details useful in the implementation of the Treaty and for administrative requirements, matters or procedures. The article also provides a basis for the rules relating to recordation of change in name or address, recordation of change in applicant or owner, recordation of a licensing agreement or security interest and correction of a mistake. There are no longer article provisions for these matters as the level of detail contained in the former articles was considered more appropriate for the rules. This article also provides a basis for certain administrative matters relating to the amendment of the rules, requirement of unanimity and resolution of conflicts between the Treaty and the regulations.

Articles 15 through 26, and associated Rules—These articles are considered the Administrative and Final provisions of the Treaty and are, for the most part, self-explanatory. Many of the provisions are modeled after those employed in other recently adopted treaties such as the Geneva Act of the Hague Agreement, the Trademark Law Treaty, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Article 21 should be noted, including the bracketed provision in paragraph (1)(b), as it relates to the application of the Treaty to existing applications and patents. Rule 21 should be noted as it relates to the requirement of unanimity for amending certain rules under Article 14(3).

Dated: February 25, 2000.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 00–5767 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Air Force C2 Plenary Session will meet at Hurlburt Field, Florida on March 20–21, 2000 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to receive briefings and discuss the direction of the study. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–5698 Filed 3–8–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Membership of the Defense Information Systems Agency Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Information System Agency.

ACTION: Notice of Membership of the Defense Information Systems Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board of the Defense Information Systems Agency. The publication of membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DISA.

EFFECTIVE DATE: January 21, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie K. Bazemore, SES Program Manager, Civilian Personnel Division, Personnel and Administration Directorate, Defense Information Systems Agency (703) 607–4411.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the DISA SES performance Review Board. They will serve a one-year renewable term, effective 24 May 1999.

Ms. Diann L. McCoy, Deputy Manager, National Communications System

Mr. Peter Paulson, Chief, Networks Division

John H. Campbell, Major General, USAF Vice Director, DISA

Mr. Robert Hutten, Deputy Director for Strategic Plans and Policy

Ms. Dawn Hartley, Chief Technology Officer/Technical Director for Joint Interoperability Engineering Organization

Jack Penkoske,

Chief, Civilian Personnel Division.

[FR Doc. 00–5699 Filed 3–8–00; 8:45 am]

BILLING CODE 3610–05–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide current Regulatory Guidance Letters (RGLs) to all interested parties. RGLs are used by the Corps Headquarters as a means to transmit guidance on the permit program (33 CFR 320–330) to its division and district commanders. The Corps is discontinuing the practice of publishing the current RGLs in the Notice Section of the **Federal Register**. As a means to insure the widest dissemination of this information while reducing costs to the Federal Government, all information regarding the RGLs may now be obtained by accessing the Corps of Engineers Regulatory Home Page at: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/. The Corps no longer maintains a mailing list to furnish copies of the RGLs to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Smith, Regulatory Branch, Office of the Chief of Engineers at (202) 761–0201.

SUPPLEMENTARY INFORMATION: RGLs were developed by the Corps of Engineers as a system to organize and track written guidance issued to its field agencies. RGLs are normally issued as a result of evolving policy; judicial decisions and changes to the Corps regulations or another agency's regulations which affect the permit program. RGLs are used only to interpret or clarify existing regulatory program policy, but do provide mandatory guidance to Corps district offices. RGLs are sequentially numbered and expire on a specified date. However, unless superseded by specific provisions of subsequently issued regulations or RGLs, the guidance provided in RGLs generally remains valid after the expiration date. The Corps incorporates most of the guidance provided by RGLs whenever it revises its permit regulations. We are hereby publishing all *current* RGLs beginning with RGL 95–1 and ending with RGL 96–2. RGLs 94–1 and 94–2 expired on December 31, 1999, and both have been removed from this publication. The Corps is discontinuing the practice of publishing each RGL in the Notice Section of the **Federal Register** at this time. All information regarding the RGLs may now be obtained by accessing the Corps of Engineers Regulatory Home Page at: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.

Dated: March 6, 2000.

Charles M. Hess

Chief, Operations Division, Office of Deputy Commanding General for Civil Works.

Regulatory Guidance Letter (RGL 95–1)

Issued: 31 March 1995, EXPIRES: 31 December 2000.

Subject: Guidance on Individual Permit Flexibility for Small Landowners.

1. Enclosed is a memorandum for the field signed by the Acting Assistant Secretary of the Army (Civil Works) and the Environmental Protection Agency dated 6 March 1995. This memorandum provides guidance on flexibility that the U.S. Army Corps of Engineers should apply when making determinations of compliance with the Section 404(b)(1) Guidelines with regard to the alternatives analysis.

2. This memorandum should be implemented immediately. It constitutes an important aspect of the President's Plan for protecting the Nation's wetlands, ''Protecting America's Wetlands: A Fair, Flexible, and Effective Approach'' (published on 24 August 1993).

3. This guidance expires on 31 December 2000 unless sooner revised or rescinded.

FOR THE DIRECTOR OF CIVIL WORKS:
Encl
/S/
DANIEL R. BURNS, P.E.,
Chief, Operations, Construction and Readiness Division
Directorate of Civil Works

United States Environmental Protection Agency
Office of Water
Washington, DC 20460

United States Department of the Army
Office of the Assistant Secretary
Washington, DC 20310–0103

MEMORANDUM FOR THE FIELD
March 6, 1995

SUBJECT: Individual Permit FPexibility for Small Landowners

In order to clearly affirm the FPexibility afforded to small landowners under Section 404 of the Clean Water Act, this policy clarifies that for discharges of dredged or fill material affecting up to two acres of non-tidal wetlands for the construction or expansion of a home or farm building, or expansion of a small business, it is presumed that alternatives located on property not currently owned by the applicant are not practicable under the Section 404(b)(1) Guidelines.

Specifically, for those activities involving discharges of dredged or fill material affecting up to two acres into jurisdictional wetlands for:

(1) The construction or expansion of a single family home and attendant features, such as a driveway, garage, storage shed, or septic field;

(2) The construction or expansion of a barn or other farm building; or

(3) The expansion of a small business facility; which are not otherwise covered by a general permit, it is presumed that alternatives located on property not currently owned by the applicant are not practicable under the Section 404(b)(1) Guidelines. The Guidelines' requirements to appropriately and practicably minimize and compensate for any adverse environmental impacts of such activities remain.

Discussion

The Clean Water Act Section 404 regulatory program provides that the Army Corps of Engineers evaluate permit applications for the discharge of dredged or fill material into waters of the U.S., including wetlands, in accordance with regulatory requirements of the Section 404(b)(1) Guidelines (Guidelines). The Guidelines are substantive environmental criteria used in evaluating discharges of dredged or fill material.

The Section 404(b)(1) Guidelines establish a mitigation sequence that provides a sound framework to ensure that the environmental impacts of permitted actions are acceptable. Under this framework, there is a three-step sequence for mitigation potential adverse impacts to the aquatic environment associated with a proposed discharge—first avoidance, then minimization, and lastly compensation for unavoidable impacts to aquatic resources.

The Guidelines' mitigation sequence is designed to establish a consistent approach to be used in ensuring that all practicable measures have been taken to reduce potential adverse impacts associated with proposed projects in wetlands and other aquatic systems. The Guidelines define the term ''practicable'' as ''available and capable of being done [by the applicant] after taking into consideration cost, existing technology, and logistics in light of overall project purposes'' (40 CFR 230.3(q)). The first step in the sequence requires the evaluation of potential alternative sites under § 230.10(a) of the Guidelines, to locate the proposed project so that aquatic impacts are avoided to the extent practicable.

This policy statement clarifies that, for the purposes of the alternatives analysis, it is presumed that practicable alternatives are limited to property owned by the permit applicant in circumstances involving certain small projects affecting less than two acres of non-tidal wetlands. This presumption is consistent with the practicability considerations required under the Guidelines and reflects the nature of the projects to which the presumption applies—specifically, the construction or expansion of a barn or other farm building, or the expansion of a business. For such small projects that would solely expand an existing structure, the basic project purpose is so tied to the existing structures owned by the applicant, that it would be highly unusual that the project could be practicably located on other sites not owned by the applicant. In these cases, such as construction of driveways, garages, or storage sheds or with home and barn additions, proximity to the existing structure is typically a fundamental aspect of the project purpose.

In the evaluation of potential practicable alternatives, the Guidelines do not exclude the consideration of sites that, while not currently owned by the permit applicant, could reasonably be obtained to satisfy the project purpose. However, it is the experience of the Army Corps of Engineers and EPA that areas not currently owned by the applicant have, in the great majority of circumstances, not been determined to be practicable alternatives in cases involving the small landowner activities described above. Cost, availability, and logistical and capability considerations inherent in the determination of practicability under the Guidelines have been the basis for this conclusion by the agencies.

The agencies recognize that the presumption characterized in this policy statement may be rebutted in certain circumstances. For example, a more thorough review of practicable alternatives would be warranted for individual sites comprising a subdivision of homes, if following issuance of this policy statement, a real estate developer subdivided a large, contiguous wetlands parcel into numerous parcels. In addition, the presumption is applicable to the expansion of existing small business facilities. Small businesses are typically confined to only one location and with economic and logistical limitations that generally preclude the availability of practicable alternative locations to meet their expansion needs. Conversely, larger businesses with multiple locations and greater resources are expected to consider opportunities to practicably avoid adverse aquatic impacts by evaluating off-site alternatives.

Finally, it is important to note that this presumption of practicable alternatives is intended to apply to the individual permit process. Alternatives are not evaluated for activities covered by general permits. Many activities related to the construction or expansion of a home, farm, or business, are already covered by a general permit. In addition, in conjunction with the issuance of this policy statement, a nationwide general permit authorizing discharges related to single family residential development is being proposed and will be available for public comment.

If you have any questions regarding this memorandum, please contact Gregory peck of EPA's Wetlands Division at (202) 260–8794 or Michael Davis of the Corps of Engineer's Regulatory Branch at (202) 272–0199.

\S\
Robert Perciasepe
Assistant Administrator for Water
U.S. Environmental Protection Agency

\S\
John Zirschky
Acting Assistant
Secretary of the Army
(Civil Works)

REGULATORY GUIDANCE LETTER (RGL 96–1)

Issued: 05 NOVEMBER 1998, EXPIRES: 31 DECEMBER 2001

SUBJECT: Use of Nationwide Permit Number 23 for U.S. Coast Guard Categorical Exclusions

1. We have concurred with the categorical exclusions (CE) enclosure submitted by the United States Coast Guard (Coast Guard) pursuant to the subject nationwide permit number 23 at 33 CFR Part 330, including a

notification requirement for CE numbers (6) and (8). The U.S. Army Corps of Engineers published the Coast Guard CEs in 61 FR 18573, April 26, 1996, for comment regarding the applicability of nationwide permit number 23 for those activities requiring Department of the Army authorization. This Regulatory Guidance Letter supersedes the Coast Guard CEs previously approved under nationwide permit number 23 in accordance with Regulatory Guidance Letter 83–5, dated 18 April 1983.

2. The Corps has conditioned the nationwide permit to require notification to the appropriate Corps office prior to beginning work under Coast Guard CE number (6) to address potential impacts to wetlands (notification is only required to the Corps for projects where wetland impacts are proposed) and number (8) to address potential impacts/encroachment on Federal navigation projects. The District Engineer will review the notification and will either verify whether the activity meets the terms and conditions of nationwide permit 23, will require evaluation under standard permit procedures, or that additional conditioning of the activity is necessary to ensure that no unacceptable adverse effects will result to wetlands for projects under CE number (8). Authorization of the Coast Guard CEs does not restrict the Division or District Engineers' authorities to exercise discretionary authority, or the Corps modification, suspension, or revocation procedures. Development of local procedures to streamline coordination is encouraged where a Corps division or district further conditions the nationwide permit to require a notification for additional activities.

3. It should be noted that the Coast Guard provided a complete listing of CEs, including many that do not require Department of the Army authorization. However, to reduce confusion when referencing the CE number, we have included all Coast Guard CEs in the enclosure.

4. This guidance expires 31 December 2001 unless sooner revised or rescinded.

FOR THE DIRECTOR OF CIVIL WORKS:
\S\
DANIEL R. BURNS, P.E.
Chief, Operations, Construction, and Readiness Division
Directorate of Civil Works

U.S. Coast Guard Categorical Exclusion List

The following is a consolidated list prepared from the U.S. Coast Guard Federal Register notices (59 FR 38654, July 29, 1994, 60 FR 32197, June 20, 1995, and 61 FR 13563, March 27, 1996). The list does not include the procedures the U.S. Coast Guard must follow to determine whether certain activities qualify for a categorical exclusion. Notification to the U.S. Army Corps of Engineers is required prior to initiation of work for activities conducted under numbers (6) (notification is only required to the Corps for projects when wetland impacts are proposed) and number (8).

1. Routine personnel, fiscal, and administrative activities, actions, procedures, and policies which clearly do not have any environmental impacts, such as military and civilian personnel recruiting, processing, paying, and record keeping.

2. Routine procurement activities and actions for goods and services, including office supplies equipment, mobile assets, and utility services for routine administration, operation, and maintenance.

3. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an existing approved disposal site.

4. Routine repair, renovation, and maintenance actions on aircraft and vessels.

5. Routine repair and maintenance of buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use, or an impact on a historically significant element or settings.

6. Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use, a historically significant element, or historically significant setting. (When wetland impacts are proposed, notification is required to the appropriate office of U.S. Army Corps of Engineers prior to initiation of work.)

7. Routine repair and maintenance to waterfront facilities, including mooring piles, fixed floating piers, existing piers, and unburied power cables.

8. Minor renovations and additions to waterfront facilities, including mooring piles, fixed floating piers, existing piers, and unburied power cables, which do not require special, site-specific regulatory permits. (Notification is required to the appropriate office of U.S. Army Corps of Engineers prior to initiation of work.)

9. Routine grounds maintenance and activities at units and facilities. Examples include localized pest management actions and actions to maintain improved grounds (such as landscaping, lawn care, and minor erosion control measures) that are conducted in accordance with applicable Federal, State, and local directives.

10. Installation of devices to protect human or animal life, such as raptor electrocution prevention devices, fencing to restrict wildlife movement on to airfields, and fencing and grating to prevent accidental entry to hazardous areas.

11. New construction on heavily developed portions of Coast Guard property, when construction, use, and operation will comply with regulatory requirements and constraints.

12. Decisions to decommission equipment or temporarily discontinue use of facilities or equipment. This does not preclude the need to review decommissioning under Section 106 of the National Historic Preservation Act.

13. Demolition or disposal actions that involve buildings or structures when conducted in accordance with regulations applying to removal of asbestos, PCB's, and other hazardous materials, or disposal actions mandated by Congress. In addition, if the building or structure is listed, or eligible for listing, in the National Register of Historic Places, then compliance with Section 106 of the National Historic Preservation Act is required.

14. Outleasing of historic lighthouse properties as outlined in the Programmatic Memorandum of Agreement between the Coast Guard, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers.

15. Transfer of real property from the Coast Guard to the General Services Administration, Department of the Interior, and other Federal departments and agencies, or as mandated by Congress; and the granting of leases, permits, and easements where there is no substantial change in use of the property.

16. Renewals and minor amendments of existing real estate licenses or grants for use of government-owned real property where prior environmental review has determined that no significant environmental effects would occur.

17. New grants or renewal of existing grants of license, easements, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles; for such existing rights-of-way as electrical, telephone, and other transmission and communication lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and irrigation facilities; and for similar utility and transportation uses.

18. Defense preparedness training and exercises conducted on other than Coast

Guard property, where the lead agency or department is not Coast Guard or Department of Transportation and the lead agency or department has completed its NEPA analysis and documentation requirements.

19. Defense preparedness training and exercise conducted on Coast Guard property that do not involve undeveloped property or increase noise levels over adjacent property and that involve a limited number of personnel, such as exercises involving primarily electric simulation or command post personnel.

20. Simulated exercises, including tactical and logistical exercises that involve small numbers of personnel.

21. Training of an administrative or classroom nature.

22. Operations to carry out maritime safety, maritime law enforcement, search and rescue, domestic ice breaking, and oil or hazardous substance removal programs.

23. Actions performed as a part of Coast Guard operations and the Aids to Navigation Program to carry out statutory authority in the area of establishment of floating and minor fixed aids to navigation, except electronic sound signals.

24. Routine movement of personnel and equipment, and the routine movement, handling, and distribution of nonhazardous materials and wastes in accordance with applicable regulations.

25. Coast Guard participation in disaster relief efforts under the guidance or leadership of another Federal agency that has taken responsibility for NEPA compliance.

26. Data gathering, information gathering, and studies that involve no physical change to the environment. Examples include topographic surveys, bird counts, wetland mapping, and other inventories.

27. Natural and cultural resource management and research activities that are in accordance with interagency agreements and which are designed to improve or upgrade the Coast Guard's ability to manage those resources.

28. Contracts for activities conducted at established laboratories and facilities, to include contractor-operated laboratories and facilities, on Coast Guard-owned property where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable Federal, State, and local laws and regulations.

29. Approval of recreational activities (such as Coast Guard unit picnic) which do not involve significant physical alteration of the environment, increase disturbance by humans of sensitive natural habitats, or disturbance of historic properties, and which do not occur in, or adjacent to, areas inhabited by threatened or endangered species.

30. Review of documents, such as studies, reports, and analyses, prepared for legislative proposals that did not originate in DOT and that relate to matters that are not the primary responsibility of the Coast Guard.

31. Planning and technical studies which do not contain recommendations for authorization or funding for future construction, but may recommend further study. This includes engineering efforts or environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed and does not exclude consideration of environmental matters in the studies.

32. Bridge Administration Program actions which can be described as one of the following:

(a) Modification or replacement of an existing bridge on essentially the same alignment or location. Excluded are bridges with historic significance or bridges providing access to undeveloped barrier islands and beaches. (Approach fills regulated by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act will require a separate individual or general permit.)

(b) Construction of pipeline bridges for transporting potable water.

(c) Construction of pedestrian, bicycle, or equestrian bridges and stream gauging cableways used to transport people.

(d) Temporary replacement of a bridge immediately after a natural disaster or a catastrophic failure for reasons of public safety, health, or welfare.

(e) Promulgation of operating regulations or procedures for drawbridges.

(f) Identification of advance approval waterways under 33 CFR 115.70.

(g) Any Bridge Program action which is classified as a CE by another Department of Transportation agency acting as lead agency for such action.

34. Preparation of guidance documents that implement, without substantive change, the applicable Commandant Instruction or other Federal agency regulations, procedures, manuals, and other guidance documents.

(a) Regulations which are editorial or procedural, such as those updating addresses or establishing application procedures.

(b) Regulations concerning internal agency functions or organization or personnel administration, such as funding, establishing Captain of the Port boundaries, or delegating authority.

(c) Regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel.

(d) Regulations concerning manning, documentation, admeasurement, inspection, and equipping of vessels.

(e) Regulations concerning equipment approval and carriage requirements.

(e) Regulations establishing, disestablishing, or changing the size of Special Anchorage Areas or anchorage grounds.

(f) Regulations establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones.

(g) Special local regulations issued in conjunction with a regatta or marine

(h) parade; provided that, if a permit is required, the environmental analysis conducted for the permit included an analysis of the impact of the regulations.

(i) Regulations in aid of navigation, such as those concerning rules of the road, International Regulations for the Prevention of Collisions at Sea (COLREGS), bridge-to-bridge communication, vessel traffic services, and marking of navigation systems.

35. Approvals of regatta and marine event permits for the following events:

(a) Events that are not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government. For example, environmentally sensitive areas may include such areas as critical habitats or migration routes for endangered or threatened species or important fish or shellfish nursery areas.

(b) Events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government and for which the Coast Guard determines, based on consultation with the Government agency, that the event will not significantly affect the environmentally sensitive area.

Regulatory Guidance Letter 96–02

ISSUED: 12 DECEMBER 1966, EXPIRES: 31 DECEMBER 2001

SUBJECT: Applicability of Exemptions under Section 404(f) to ''Deep-Ripping'' Activities in Wetlands

1. Enclosed is a memorandum to the field jointly signed by the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers. The memorandum provides guidance clarifying when ''deep-ripping'' activities within wetlands require Department of the Army authorization.

2. This guidance expires 31 December 2001, unless sooner revived or rescinded.

FOR THE DIRECTOR OF CIVIL WORKS:

S Encl.
DANIEL R. BURNS, P.E.
Chief, Operations, Construction
And Readiness Division
Directorate of Civil Works

Department of the Army
U.S. Army Corps of Engineers
United States Environmental Protection
Agency

Memorandum to the Field

12 December 1996

SUBJECT: Applicability of Exemptions under Section 404(f) to ''Deep-Ripping'' Activities in Wetlands.

PURPOSE: The purpose of this memorandum is to clarify the applicability of exemptions provided under Section 404(f) of the Clean Water Act (CWA) to discharges associated with ''deep-ripping'' and related activities in wetlands.[1]

Background

1. Section 404(f)(1) of the CWA exempts from the permit requirement certain discharges associated with normal farming, forestry, and ranching practices in waters of the United States, including wetlands. Discharges into waters subject to the Act associated with farming, forestry, and ranching practices identified under Section 404(f)(1) do not require a permit except as provided under Section 40.4(f)(2).

2. Section 404(f)(1) does not provide a total automatic exemption for all activities related to agricultural silvicultural or ranching practices. Rather, Section 404(f)(1) exempts only those activities specifically identified in paragraphs (A) through (F), and ''other activities of essentially the same character as named'' [44 FR 34264]. For example, Section 404(f)(1)(A) lists discharges of dredged or fill material from ''normal farming, silviculture and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices.''

3. Section 404(f)(1)(A) is limited to activities that are part of an ''established (*i.e.,* ongoing) farming, silviculture, or ranching operation.'' This ''established'' requirement is intended to reconcile the dual intent reflected in the legislative history that although Section 40.4 should not unnecessarily restrict farming, forestry, or ranching from continuing at a particular site, discharge activities which could destroy wetlands or other waters should be subject to regulation.

4. EPA and Corps regulations [40 CFR 230 and 33 CFR 320] and preamble define in some detail the specific ''normal'' activities fisted in Section 404(f)(1)(A). Three points may be useful in the current context:

a. As explained in the preamble to the 1979 proposed regulations, the words ''such as'' have been consistently interpreted as restricting the section ''to the activities named in the statute and other activities of essentially the same character as named,'' and ''preclude the extension of the exemption * * * to activities that are unlike those named.'' [44 FR 34264].

b. Plowing is specifically defined in the regulations not to include the redistribution of surface material in a manner which converts wetlands areas to uplands [See 40 CFR 233.35(a)(1)(iii)(D)].

c. Discharges associated with activities that establish an agricultural operation in wetlands where previously ranching had been conducted, represents a ''change in use'' within the meaning of Section 404(f)(2). Similarly, discharges that establish forestry practices in wetlands historically subject to agriculture also represent a change in use of the site (See 40 CFR 233.35(c)].

5. The statute includes a provision at Section 404(f)(2) that ''recaptures'' or reestablishes the permit requirement for those otherwise exempt discharges which:

a. Convert an area of the waters of the U.S. to a new use, and

b. Impair the flow or circulation of waters of the U.S. or reduce the reach of waters of the U.S.

Conversion of an area of waters of the U.S. to uplands triggers both provision (a) and (b) above. Thus, at a minimum any otherwise exempt discharge that results in the conversion of waters of the U.S. to upland is recaptured under Section 404(f)(2) and requires a permit. It should be noted that in order to trigger the recapture provisions of Section 404(f)(2), the discharges themselves need not be the sole cause of the destruction of the wetland or other change in use or sole cause of the reduction or impairment of reach, flow, or circulation of waters of the U.S. Rather, the discharges need only be ''incidental to'' or ''part of'' an activity which is intended to or will forseeably bring about that result. Thus, in applying Section 404(f)(2), one must consider discharges in context, rather than isolation.

Issue

1. Questions have been raised involving ''deep-ripping'' and related activities in wetlands and whether discharges associated with these actions fall within the exemptions at Section 404(f)(1)(A). In addition, the issue has been raised whether, if such activities fall within the exemption, they would be recaptured under Section 404(f)(2).

2. ''Deep-ripping'' is defined as the mechanical manipulation of the soil to break up or pierce highly compacted, impermeable or slowly permeable subsurface soil layers, or other similar kinds of restrictive soil layers. These practices are typically used to break up these subsoil layers (*e.g.,* impermeable soil layer, hardpan) as part of the initial preparation of the soil to establish an agricultural or silvicultural operation. Deep-ripping and related activities are also used in established farming operations to break up highly compacted soil. Although deep-ripping and related activities may be required more than once, the activity is typically not an annual practice. Deep-ripping and related activities are undertaken to improve site drainage and facilitate deep root growth, and often occur to depths greater than 16 inches and, in some cases, exceeding 4 feet below the surface. As such it requires the use of heavy equipment, including bulldozers, equipped with ripper-blades, shanks, or chisels often several feet in length. Deep-ripping and related activities involve extending the blades to appropriate depths and dragging them through the soil to break up the restrictive layer.

3. Conversely, plowing is defined in EPA and Corps regulations [40 CFR 230 and 33 CFR 320] as ''all forms of primary tillage * * * used * * * for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops'' [40 CFR 232.3(d)(4)]. As a general matter, normal plowing activities involve the annual or at least regular, preparation of soil prior to seeding or other planting activities. According to USDA, plowing generally involves the use of a blade, chisel or series of blades, chisels, or discs, usually 8–10 inches in length pulled behind a farm vehicle to prepare the soil for the planting of annual crops or to support an ongoing farming practice. Plowing is commonly used to break up the surface of the soil to maintain soil tilth and to facilitate infiltration throughout the upper root zone.

[1] As this guidance addresses primarily agricultural-related activities, characterizations of such practices have been developed in consultation with experts at the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service.

Discussion

1. Plowing in wetlands is exempt from regulation consistent with the following circumstances:

a. It is conducted as part of an ongoing, established agricultural, silvicultural or ranching operation; and

b. The plowing is not incidental to an activity that results in the immediate or gradual conversion of wetlands to non-waters.

c. The plowing is not incidental to an activity that results in the immediate or gradual conversion of wetlands to non-waters.

2. Deep-ripping and related activities are distinguishable from plowing and similar practices (*e.g.,* discing, harrowing) with regard to the purposes and circumstances under which it is conducted, the nature of the equipment that is used, and its effect, including in particular the impacts to the hydrology of the site.

a. Deep-ripping and related activities are commonly conducted to depths exceeding 16 inches, and as deep as 6–8 feet below the soil surface to break restrictive soil layers and improve water drainage at sites that have not supported deeper rooting crops. Plowing depths, according to USDA, rarely exceed one foot into the soil and not deeper than 16 inches without the use of special equipment involving special circumstances. As such, deep-ripping and related activities typically involve the use of special equipment, including heavy mechanized equipment and bulldozers, equipped with elongated ripping blades, shanks, or chisels often several feet in length. Moreover, while plowing is generally associated with ongoing operations, deep-ripping and related activities are typically conducted to prepare a site for establishing crops not previously planted at the site. Although deep-ripping may have to be redone at regular intervals in some circumstances to maintain proper soil drainage, the activity is typically not an annual or routine practice.

b. Frequently, deep-ripping and related activities are conducted as a preliminary step for converting a ''natural'' system or for preparing rangeland for a new use such as farming or silviculture. In those instances, deep ripping and related activities are often required to break up naturally-occurring impermeable or slowly permeable subsurface soil layers to facilitate proper root growth. For example, for certain depressional wetlands types such as vernal pools, the silica-cemented hardpan (durapan) or other restrictive layer traps precipitation and seasonal runoff creating ponding and saturation conditions at the soil surface. The presence of these impermeable or slowly permeable subsoil layers is essential to support the hydrology of the system. Once these layers are disturbed by activities such as deep-ripping, the hydrology of the system is disturbed and the wetland is often destroyed.

c. In contrast, there are other circumstances where activities such as deep-ripping and related activities are a standard practice of an established on-going farming operation. For example, in parts of the Southeast, where there are deep soils having a high clay content, mechanized farming practices can lead to the compaction of the soil below the sod surface. It may be necessary to break up, on a regular although not annual basis, these restrictive layers in order to allow for normal root development and infiltration. Such activities may require special equipment and can sometimes occur to depths greater than 16 inches. However, because of particular physical conditions, including the presence of a water table at or near the surface for part of the growing season, the activity typically does not have the effect of impairing the hydrology of the system or otherwise altering the wetland characteristics of the site.

Conclusion

1. When deep-ripping and related activities are undertaken as part of an established ongoing agricultural silvicultural or ranching operation, to break up compacted soil layers and where the hydrology of the site will not be altered such that it would result in conversion of waters of the U.S. to upland, such activities are exempt under Section 404(f)(1)(A).

2. Deep-ripping and related activities in wetlands are not part of a normal ongoing activity, and therefore not exempt, when such practices are conducted in association with efforts to establish for the first time (or when a previously established operation was abandoned) an agricultural silvicultural or ranching operation. In addition, deep-ripping and related activities are not exempt in circumstances where such practices would trigger the ''recapture'' provision of Section 404(f)(2):

(a) Deep-ripping to establish a farming operation at a site where a ranching or forestry operation was in place is a change in use of such a site. Deep-ripping and related activities that also have the effect of altering or removing the wetland hydrology of the site would trigger Section 404(f)(2) and such ripping would require a permit.

(b) Deep-ripping a site that has the effect of converting wetlands to non-waters would also trigger Section 404(f)(2) and such ripping would require a permit.

3. It is the agencies' experience that certain wetland types are particularly vulnerable to hydrological alteration as a result of deep-ripping and related activities. Depressional wetland systems such as prairie potholes, vernal pools and playas whose hydrology is critically dependent upon the presence of an impermeable or slowly permeable subsoil layer are particularly sensitive to disturbance or alteration of this subsoil layer. Based upon this experience, the agencies have concluded that, as a general matter, deep-ripping and similar practices, consistent with the descriptions above, conducted in prairie potholes, vernal pools, playas, and similar depressional wetlands destroy the hydrological integrity of these wetlands. In these circumstances, deep-ripping in prairie potholes, vernal pools, and playas is recaptured under Section 404(f)(2) and requires a permit under the Clean Water Act.

Robert H. Wayland III
Director
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency

Daniel R. Burns, P.E.
Chief, Operations. Construction and Readiness Division
Directorate of Civil Works
U.S. Army Corps of Engineers

[FR Doc. 00–5815 Filed 3–8–00; 8:45 am]
BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Headquarters, U.S. Marine Corps

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Headquarters, U.S. Marine Corps announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed information collection; (c) Ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 8, 2000.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Marine Corps Recruiting Command, Code M3280, Russell Road, Quantico, VA 22134.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Major Andrew Fortunato at (703) 784–9433.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Marine Corps Advertising Awareness and Attitude Tracking Study; OMB Control Number 0704–0155.

Needs and Uses: The Marine Corps Advertising Awareness and Attitude Tracking Study is used by the Marine Corps to measure the effectiveness of current advertising campaigns. This information is also used to plan future advertising campaigns.

Affected Public: Individuals or households.

Annual Burden Hours: 980.

Number of Respondents: 1,400.

Responses per Respondent: 2.

Average Burden per Response: 21 minutes.

Frequency: Semi-annually.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A))

Dated: February 29, 2000.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–5702 Filed 3–8–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Disposal and Reuse of Naval Air Station Alameda, California, and the Fleet and Industrial Supply Center Oakland's Alameda Annex and Facility, Alameda, CA

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) (1994), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR parts 1500–1508, hereby announces its decision to dispose of Naval Air Station (NAS) Alameda and the Fleet and Industrial Supply Center Oakland's Alameda Annex and Facility (Alameda Annex), which are located in Alameda, California.

Navy analyzed the impacts of the disposal and reuse of NAS Alameda and the Alameda Annex in an Environmental Impact Statement (EIS) as required by NEPA. The EIS analyzed four reuse alternatives and identified the NAS Alameda Community Reuse Plan (Reuse Plan), adopted by the Alameda Reuse and Redevelopment Authority (ARRA) on September 3, 1997, and described in the EIS as the Reuse Plan Alternative, as the Preferred Alternative.

The Preferred Alternative proposed to use NAS Alameda and the Alameda Annex for residential, educational, industrial and commercial activities and to develop parks and recreational areas. The Alameda Reuse and Redevelopment Authority is the Local Redevelopment Authority (LRA) for NAS Alameda. Department of Defense rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR § 176.20(a).

Navy intends to dispose of NAS Alameda in a manner that is consistent with the Reuse Plan. Navy has determined that the mixed land use proposed for NAS Alameda will meet the goals of achieving local economic redevelopment, creating new jobs, and providing additional housing, while limiting adverse environmental impacts and ensuring land uses that are compatible with adjacent property.

Navy plans to dispose of the Alameda Annex under the authority of Section 2834(b) of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102–484, as amended by Section 2833 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Section 2821 of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103–337, and Section 2867 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106. Section 2687 of Public Law 104–106 authorizes the Secretary of the Navy to convey property associated with the Fleet and Industrial Supply Center at Oakland to the City of Alameda.

This Record Of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entities and the local zoning authority.

Background

Under the authority of the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note (1994), the 1993 Defense Base Closure and Realignment Commission recommended the closure of Naval Air Station Alameda. This recommendation was approved by President Clinton and accepted by the One Hundred Third Congress in 1993. The Naval Air Station closed on April 30, 1997.

Nearly all of NAS Alameda is located in the City of Alameda. The southwest corner of the property is located in the City of San Francisco. The Air Station is bounded on the north by the Oakland Inner Harbor; on the east by the City of Alameda and the Alameda Annex; and on the south and west by San Francisco Bay. The Navy property covers about 2,515 acres, of which 960 acres are submerged. Navy controls an additional 159 acres (of which 154 acres are submerged) by way of a lease with the City of Alameda. Navy also controls about two acres by way of easements for utilities.

Under the authority of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, 10 U.S.C. 2687 note (1994), the 1995 Defense Base Closure and Realignment Commission recommended the closure of fleet and Industrial Supply Center (FISC) Oakland. The Alameda Annex and Facility were part of the Navy supply complex at FISC Oakland. This recommendation was approved by President Clinton and accepted by the One Hundred Fourth Congress in 1995. The Alameda Annex closed on September 30, 1998.

Because the Alameda Annex was part of the FISC Oakland property, Section 2867 of Public Law 104–106 authorizes Navy to convey the Annex property to the City of Alameda. This authority is independent of the Defense Base Closure and Realignment Act of 1990 as well as the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484 (1994), and its implementing regulations, the Federal Property Management Regulations, 41 CFR part 101–47.

The Alameda Annex is located adjacent to and east of NAS Alameda and is situated within the boundaries of the City of Alameda. The Alameda Annex property is bounded on the north by the Oakland Inner Harbor; on the east and south by the City of Alameda; and on the south and west by NAS Alameda. This Navy property covers about 147 acres, of which six acres are submerged.

During the Federal screening process, three Federal agencies requested interagency transfers of base closure property at NAS Alameda and the Alameda Annex. These included the Department of the Interior's United States Fish And Wildlife Service, the United States Coast Guard, and the Department of Transportation's Maritime Administration (MARAD).

Navy will transfer about 900 acres (of which 375 acres are submerged) in the western and southwestern parts of NAS Alameda to the United States Fish and Wildlife Service, which will establish the Alameda National Wildlife Refuge. This Refuge will protect the Federally-listed endangered California least tern, the endangered California brown pelican, and several species of migratory birds protected under the Migratory Bird Treaty Act of 1918, 16 U.S.C. 703–712 (1994).

Navy may transfer 582 residential units, an administrative building (Building 545), and about 69 acres in the eastern part of NAS Alameda to the United States Coast Guard. The Coast Guard would continue to use these residences and Building 545 for its housing and administrative requirements.

The Maritime Administration requested piers at both NAS Alameda and the Alameda Annex to berth vessels that are elements of the Ready Reserve Force. The Maritime Administration subsequently withdrew its request for piers at NAS Alameda. On March 30, 1998, Navy disapproved MARAD's request for an interagency transfer of piers at the Alameda Annex.

The remaining 1,546 acres of Navy property at NAS Alameda are surplus to the needs of the Federal Government. The entire 147 acres of Navy property at the Alameda Annex are available for disposal under the authority of Public Law 102–484, as amended by Public Law 103–160, Public Law 103–337, and Public Law 104–106.

This Record Of Decision addresses the disposal and reuse of those parts of NAS Alameda that are surplus to the needs of the Federal Government and the entire Alameda Annex property. Navy will transfer its interests in the utility easements at NAS Alameda to local utility providers or the underlying property owners. In addition, Navy will return the 159 acres currently leased from the city of Alameda to the City on or before termination of the lease on June 30, 2005.

The surplus property at NAS Alameda is composed of aviation facilities including parts of the runways and taxiways and seven hangars. Most of the runways and taxiways are located on property that Navy will transfer to the United States Fish and Wildlife Service. The Air Station also contains industrial and warehouse buildings, administrative offices, personnel support facilities, residential facilities, recreational facilities and areas, a seaplane lagoon, wharves, and three piers. The Alameda Annex property contains warehouses, wharves, administrative offices, and open storage areas.

Of the 1,546 acres of surplus property at NAS Alameda, there are about 1,482 acres available to the City for economic redevelopment. The City proposes to develop residential, educational, industrial and commercial facilities on this property.

Navy will dispose of the remaining 64 acres of surplus property at NAS Alameda by way of public benefit conveyances. Navy will assign seven acres in the center of the Coast Guard housing property to the United States Department of Education for subsequent conveyance to the Alameda Unified School District to permit the continuing use of the George P. Miller Elementary School and adjacent child care facility. Navy will assign 57 acres in the northern part of NAS Alameda to the United States Department of the Interior for subsequent conveyance to the City of Alameda for use as parks and recreational areas.

Navy plans to dispose of the entire Alameda Annex property, covering about 147 acres, under the authority of Section 2834(b) of Public Law 102–484, as amended by Section 2833 of Public Law 103–160, Section 2821 of Public Law 103–337, and Section 2867 of Public Law 104–106.

Navy published a Notice of Intent in the **Federal Register** on February 22, 1996, announcing that Navy would prepare an EIS for the disposal and reuse of Naval Air Station Alameda and the Alameda Annex. On March 13, 1996, Navy held a public scoping meeting at Alameda High School in Alameda, and the scoping period concluded on March 29, 1996.

Navy distributed the Draft EIS (DEIS) to Federal, State, and local agencies, elected officials, interested parties, and the general public on April 16, 1999, and commenced a 45-day public review and comment period. During this period, Federal, State, and local agencies, community groups and associations, and interested persons submitted oral and written comments concerning the DEIS. On May 18, 1999, Navy held a public hearing at Alameda High School to receive comments on the DEIS.

Navy's responses to the public comments on the DEIS were incorporated in the Final EIS (FEIS), which was distributed to the public on October 29, 1999, for a review period that concluded on November 29, 1999. Navy received nine letters commenting on the FEIS.

Alternatives

NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this Federal property. In the FEIS, Navy analyzed the environmental impacts of four reuse alternatives. Navy also evaluated a ''No Action'' alternative that would leave the property in caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

On July 14, 1993, the City Council of Alameda established the Alameda Base Reuse Advisory Group to advise the City Council concerning base conversion issues. The Advisory Group also provided a forum for public participation in the reuse planning process. The Advisory Group held four public workshops on November 6, 1993, October 12, 1994, October 29, 1994, and January 28, 1995, where it solicited comments concerning reuse of the base.

On April 5, 1994, the City of Alameda and Alameda County established the Alameda Reuse and Redevelopment Authority as a joint powers authority responsible for managing the reuse planning process for NAS Alameda. Between April 1994 and January 1996, ARRA issued newsletters and held regular public meetings where it provided status reports and solicited additional comments concerning reuse of the Naval property. On January 31, 1996, ARRA adopted the NAS Alameda Community Reuse Plan, dated January 1996. ARRA Resolution No. 011.

On June 4, 1997, ARRA modified the January 1996 reuse plan by adding office and commercial uses to the center of the Air Station and reducing the amount of property dedicated to educational activities there. It also designated 17 acres in the northwest part of the Air Station for use as a sports complex. On September 3, 1997, ARRA modified the January 1996 reuse plan further to recognize the boundaries and extent of property that Navy will transfer to the United States Fish and Wildlife Service.

The Reuse Plan divided the property at NAS Alameda and the Alameda Annex into six planning areas. The Civic Core, Planning Area One, covers about 334 acres in the center of NAS Alameda. This planning area contains the main administrative buildings and

parade ground, several barracks, a swimming pool and gymnasium complex, medical clinics, a post office, and restaurants. The western and southern parts of this planning area contain industrial buildings, warehouses, and seven aircraft hangars.

The Main Street Neighborhoods, Planning Area Two, covers about 265 acres in the northeastern part of NAS Alameda and the southern part of the Alameda Annex. It lies east of the Civic Core planning area and contains the residential areas on NAS Alameda and industrial buildings at the Alameda Annex.

The Inner Harbor, Planning Area Three, covers about 120 acres in the southeastern part of NAS Alameda. This planning area contains industrial buildings, warehouses, and a park.

The North Waterfront, Planning Area Four, covers about 88 acres situated in the northern part of the Alameda Annex along the Oakland Inner Harbor. This planning areas contains wharves and warehouses.

The Marina, Planning Area Five, covers about 125 acres around the seaplane lagoon in the southern part of NAS Alameda along San Francisco Bay, south of the Civic Core planning area. This planning area contains three piers, two wharves, several buildings and open space.

The northwest part of the Air Station along the Oakland Inner Harbor, designated in the Reuse Plan as the Northwest Territories, Planning Area Six, covers about 272 acres located north of the proposed Alameda National Wildlife Refuge. This planning area includes parts of the runways and taxiways.

The Reuse Plan, identified in the FEIS as the Preferred Alternative, proposed a mix of land uses for each of the six planning areas. The Preferred Alternative would develop residential, educational, industrial, and commercial activities as well as parks and recreational areas. It will be necessary to make extensive utility infrastructure and roadway improvements to support the Reuse Plan's proposed redevelopment of NAS Alameda and the Alameda Annex.

In the Civic Core planning area, the Preferred Alternative would develop a mixed use office and institutional center, providing about 916,000 square feet of existing space and an additional 2,279,000 square feet of space to be built. This center would be composed of offices and educational and commercial facilities.

On 37 acres in the northern part of the Civic Core, this Alternative would build athletic fields and recreational facilities and expand the existing parade ground into a larger open space mall covering 57 acres. The Preferred Alternative would build 192 townhouses on 16 acres in this part of the base. It would also dedicate 52,000 square feet of space to commercial activities that would support the new residents. The commercial activities would include restaurants, cafes, convenience stores, retail stores, and department stores. About one third of the buildings in this planning area would be demolished to accommodate the proposed redevelopment.

On 236 acres in the Main Streets Neighborhoods planning area, the Preferred Alternative would develop a mix of housing units, with 1,314 single family homes and 174 attached homes composed of existing residential units and new construction. On 21 acres, this Alternative would continue to use the George P. Miller Elementary School and adjacent child care center and build a new elementary school to support the proposed residential complex. This Alternative would use the Navy Lodge as a shelter; build small retail and commercial stores on four acres; and reserve an additional four acres for parks and recreational activities.

In the northern part of the Inner Harbor planning area, the Preferred Alternative would develop about 910,000 square feet of space for light industrial activities. This development would also provide offices, restaurants, and service industries that would support the light industrial activities. On 36 acres in the southern part of the Inner Harbor area, this Alternative would develop a regional park to be included in the Bay Trail System. On 13 acres, it would develop a recreational vehicle park with a capacity of 135 recreational vehicles. Where feasible, the existing roadways in this part of the base would be extended to connect with the residential neighborhood outside the Air Station property.

In the northern part of the North Waterfront planning area, the Preferred Alternative would demolish all of the existing structures and develop 418,000 square feet of space for mixed use facilities including offices. This Alternative would also develop a hotel, restaurants, a passenger ferry service, and a waterfront promenade here. On 12 acres, this Alternative would build 144 units of attached waterfront housing along the Oakland Inner Harbor.

In the southern part of the North Waterfront planning area, the Preferred Alternative would develop 993,000 square feet of space for light industrial and research and develop activities. On eight acres at the western edge of this planning area, east of the George P. Miller Elementary School, it would develop an alternative education high school, a regional kitchen facility, a parking area, a storage area, and maintenance facilities for the Alameda Unified School District.

The Preferred Alternative would develop the Marina planning area as a commercial marina. This Alternative would build a 900-slip marina in the seaplane lagoon to accommodate private and public vessels and facilities for a passenger ferry service and deep draft yachts. The three piers in the southeastern part of the Marina would be used to accommodate large cruise ships and historic vessels such as the former USS Hornet, a World War II Aircraft Carrier that is currently moored at Pier Three under a lease between ARRA and the Aircraft Carriers Hornet Foundation. This Alternative would also develop about 264,000 square feet of space for light industrial and commercial marine activities.

In the northern part of the Marina planning area, the Preferred Alternative would develop a promenade and a civic plaza. Near the plaza, this Alternative would develop facilities for civic uses such as offices, a cultural arts center or theater, and recreational activities. It would also build a hotel and conference center on four acres in this part of the base.

On 32 acres along the eastern shore of the seaplane lagoon, the Preferred Alternative would build 384 residential units composed of artists' lofts, low to moderate income apartments, and townhouses. It would allocate 100 of the 900 marina slips for those who wish to live aboard their vessels. All of the large industrial buildings in this planning area would be demolished to accommodate the proposed redevelopment.

In the western part of the Northwest Territories planning area, the Preferred Alternative would build a 162-acre links golf course, a clubhouse on six acres, and a conference center. This Alternative would also develop a 29-acre park along the shore of the Oakland Inner Harbor.

On 58 areas in the center of the Northwest Territories planning area, the Preferred Alternative would develop an international trade and commerce zone that would provide about 980,000 square feet of space. On 17 acres in the eastern part of the Northwest Territories, this Alternative would develop athletic fields that would be associated with the sports complex proposed for the Civic Core planning area.

Navy analyzed a second ''action'' alternative, described in the FEIS as the Seaport Alternative. Navy considered this Alternative in response to the San Francisco Bay Conservation and Development Commission's designation (in its San Francisco Bay Plan) of 220 acres in the northwestern part of NAS Alameda along the Oakland Inner Harbor for future use as a port. On September 18, 1997, the Commission removed this port priority use designation when it amended the San Francisco Bay Plan and the San Francisco Bay Area Seaport Plan.

The Seaport Alternative proposed land uses similar to those in the Reuse Plan. However, the Seaport Alternative proposed to develop a port facility with five container ship berths instead of the golf course and international trade zone in the Northwest Territories and would develop a college campus instead of light industrial facilities in the Civic Core. The proposed port facilities in the Northwest Territories planning area would require construction of an additional transportation link such as a bridge, a tunnel, or a high rise crane in order to transport cargo across the Oakland Inner Harbor between Alameda and the Port of Oakland.

In the Civic Core planning area, the Seaport Alternative would use about 916,000 square feet of existing space for a college campus and would develop an additional 2,279,000 square feet of space for a mixed use office and institutional center. This Alternative would expand the existing parade ground into a larger open space mall covering 57 acres and would build 192 townhouses on 16 acres in this part of the base. It would also dedicate 52,000 square feet of space to commercial activities that would support the new residents. The commercial activities would include restaurants, cafes, convenience stores, retail stores, and department stores. About one third of the buildings in this planning area would be demolished to accommodate the proposed redevelopment.

On 236 acres in the Main Streets Neighborhoods planning area, the Seaport Alternative would develop a mix of housing units, with 1,314 single family homes and 174 attached homes composed of existing residential units and new construction. On 21 acres, this Alternative would continue to use the George P. Miller Elementary School and adjacent child care center and build a new elementary school to support the proposed residential complex. This Alternative would use the Navy Lodge as a shelter; build small retail and commercial stores on four acres; and reserve an additional four acres for parks and recreational activities.

On 63 acres in the northern part of the Inner Harbor planning area, the Seaport Alternative would develop a residential complex with 378 single family homes. This Alternative would reserve eight acres for a school to be built in the future. On 49 acres in the southern part of the Inner Harbor area, the Seaport Alternative would develop a regional park to be included in the Bay Trail System. Where feasible, the existing roadways in this part of the base would be extended to connect with the residential neighborhood outside the Air Station property.

In the northern part of the North Waterfront planning area, the Seaport Alternative would demolish all of the existing structures and develop 418,000 square feet of space for mixed use facilities including offices. This Alternative would also develop restaurants, a passenger ferry service, and a waterfront promenade here. On 46 acres, this Alternative would build 552 units of attached waterfront housing along the Oakland Inner Harbor.

On eight acres at the western edge of this planning area, east of the George P. Miller Elementary School, the Seaport Alternative would develop an alternative education high school, a regional kitchen facility, a parking area, a storage area, and maintenance facilities for the Alameda Unified School District.

The Seaport Alternative would develop the Marina planning area as a commercial marina. It would build a 500-slip marina in the seaplane lagoon to accommodate private and public vessels and facilities for a passenger ferry service and deep draft yachts. The three piers in the southeastern part of this planning area would be used to accommodate large cruise ships and historic vessels such as the former USS *Hornet*. This Alternative would also develop about 264,000 square feet of space of light industrial and commercial marine activities.

In the northern part of the Marina planning area, the Seaport Alternative would develop a promenade and a civic plaza. Near the plaza, this Alternative would develop facilities for civic uses such as offices, a cultural arts center or theater, and recreational activities. It would also build a hotel and conference center on four acres in this part of the base.

On 32 acres along the eastern shore of the seaplane lagoon, the Seaport Alternative would build 384 residential units composed of artists' lofts, low to moderate income apartments, and townhouses. All of the large industrial buildings in this planning area would be demolished to accommodate the proposed redevelopment.

In the Northwest Territories planning area along the Oakland Inner Harbor, the Seaport Alternative would build a five-berth container ship port facility and container storage yard on 220 acres. The port facility would require a substantial amount of dredging in the Inner Harbor and the installation of several large cranes along the waterfront. This Alternative would also develop roads and rail service to move cargo. It would reserve 52 acres for parks and recreational activities.

Navy analyzed a third ''action'' alternative, described in the FEIS as the Residential Alternative. This Alternative would increase the amount of property dedicated to residential uses in the Civic Core, Inner Harbor, North Waterfront and Northwest Territories planning areas compared with that proposed under the Reuse Plan. The Residential Alternative would develop 5,456 residential units compared with the 2,378 residential units that the Preferred Alternative would develop.

In the Civic Core planning area, the Residential Alternative would use about 916,000 square feet of existing space for a college campus and develop an additional 1,278,000 square feet of space for a mixed use office and institutional center. It would also reserve 94 acres as open space. It would build 960 townhouses on 80 acres in this part of the base and use 78,000 square feet of space for commercial activities to support the new residents. The commercial activities would include restaurants, cafes, convenience stores, retail stores, and department stores. About one third of the buildings in this planning area would be demolished to accommodate the proposed redevelopment.

On 236 acres in the Main Streets Neighborhoods planning area, the Residential Alternative would develop a mix of housing units, with 1,314 single family homes and 174 attached homes composed of existing residential units and new construction. On 21 acres, this Alternative would continue to use the George P. Miller Elementary School and adjacent child care center and build a new elementary school to support the proposed residential complex. This Alternative would use the Navy Lodge as a shelter; build small retail and commercial stores on four acres; and reserve an additional four acres for parks and recreational activities.

On 63 acres in the northern part of the Inner Harbor planning area, the Residential Alternative would develop a residential complex with 378 single

family homes. On 13 additional acres, this Alternative would build 156 units of attached housing and reserve eight acres for a school to be built in the future. On 36 acres in the southern part of the Inner Harbor area, the Residential Alternative would develop a regional park to be included in the Bay Trail System. Where feasible, the existing roadways in this part of the base would be extended to connect with the residential neighborhood outside the Air Station Property.

In the northern part of the North Waterfront planning area, the Residential Alternative would demolish all of the existing structures and develop 313,000 square feet of space for mixed use facilities including offices. This Alternative would also develop restaurants, a passenger ferry service, and a waterfront promenade here. On 34 acres, this Alternative would build 408 units of attached waterfront housing along the Oakland Inner Harbor. On 20 acres here, the Residential Alternative would develop a 200-slip marina. On eight acres at the western edge of this planning area, east of the George P. Miller Elementary School, this Alternative would develop an alternative education high school, a regional kitchen facility, a parking area, a storage area, and maintenance facilities for the Alameda Unified School District.

The Residential Alternative would develop the Marina planning area as a commercial marina. This Alternative would build a 900-slip marina in the seaplane lagoon to accommodate private and public vessels and facilities for a passenger ferry service and deep draft yachts. The three piers in the southeastern part of this planning area would be used to accommodate large cruise ships and historic vessels such as the former USS *Hornet.* This Alternative would also develop about 264,000 square feet of space for light industrial and commercial marine activities.

In the northern part of the Marina planning area, the Residential Alternative would develop a promenade and a civic plaza. Near the plaza, this Alternative would develop facilities for civic uses such as offices, a cultural arts center or theater, and recreational activities. This Alternative would build a hotel and conference center on four acres in this part of the base.

On 32 acres along the eastern shore of the seaplane lagoon, the Residential Alternative would build 384 residential units composed of artists' lofts, low to moderate income apartments, and townhouses. It would allocate 100 of the 900 marina slips for those who wish to live aboard their vessels. All of the large industrial buildings in this planning area would be demolished to accommodate the proposed redevelopment.

On 226 acres in the Northwest Territories planning area, the Residential Alternative would build 1,200 single family homes and 312 units of attached housing and reserve eight acres for a school to be built in the future. It would also reserve 38 acres for parks and recreational activities.

Navy analyzed a fourth ''action'' alternative, described in the FESI as the Reduced Density Alternative. The Reduced Density Alternative proposed land uses similar to those advanced in the Preferred Alternative, but the extent of development would be reduced to provide more open space.

In the Civic Core planning area, the Reduced Density Alternative would develop a mixed use office and industrial park providing about 1,822,000 square feet of space. On 37 acres in the northern part of the Civil Core, this Alternative would build athletic fields and recreational facilities. It would expand the existing parade ground into a large open space mall covering 57 acres.

On 16 acres in the Civil Core planning area, the Reduced Density Alternative would build 96 townhouses. It would dedicate 26,000 square feet of space to commercial activities that would support the new residents. The commercial activities would include restaurants, cafes, convenience stores, retail stores, and department stores. On 13 acres, it would a develop a recreation vehicle park with a capacity of 135 recreational vehicles. About one third of the buildings in this planning area would be demolished to accommodate the proposed redevelopment.

On 236 acres in the Main Streets Neighborhoods planning area, the Reduced Density Alternative would develop a mix of housing units, with 793 single family homes and 144 attached homes composed of existing residential units and new construction. On 21 acres, this Alternative would continue to use the George P. Miller Elementary School and adjacent child care center and build a new elementary school to support the proposed residential complex. It would use the Navy Lodge as a shelter; build small retail and commercial stores on four acres; and reserve an additional four acres for parks and recreational activities.

On 76 acres in the northern part of the Inner Harbor planning area, the Reduced Density Alternative would develop a residential complex with 228 single family homes. This Alternative would reserve eight acres for a school to be built in the future. On 36 acres in the southern part of the Inner Harbor area, the Reduced Density Alternative would develop a regional park to be included in the Bay Trail System. Where feasible, the existing roadways in this part of the base would be extended to connect with the residential neighborhood outside the Air Station property.

In the northern part of the North Waterfront planning area, the Reduced Density Alternative would demolish all of the existing structures and develop 418,000 square feet of space for mixed use facilities including offices. This Alternative would also develop restaurants, a passenger ferry service, and a waterfront promenade here. On 12 acres, the Alternative would build 144 units of attached waterfront housing along the Oakland Inner Harbor.

In the southern part of the North Waterfront planning area, the Reduced Density Alternative would develop 381,000 square feet of space for light industrial and research and development activities. On eight acres at the western edge of this planning area, east of the George P. Miller Elementary School, this Alternative would develop an alternative education high school, a regional kitchen facility, a parking area, a storage area, and maintenance facilities for the Alameda Unified School District.

The Reduced Density Alternative would develop the Marina planning area as a commercial marina. It would build a 250-slip marina in the seaplane lagoon to accommodate private and public vessels and facilities for a passenger ferry service and deep draft yachts. The three piers in the southeastern part of this planning area would be used to accommodate large cruise ships and historic vessels such as the former *USS Hornet*. This Alternative would also develop about 115,000 square feet of space for light industrial and commercial marine activities.

In the northern part of the Marina planning area, the Reduced Density Alternative would develop a promenade and a civic plaza. Near the plaza, this Alternative would develop facilities for civic uses such as offices, a cultural arts center or theater, and recreational activities. It would build a hotel and conference center on four acres in this part of the base.

On 32 acres along the eastern shore of the seaplane lagoon, this Alternative would build about 192 residential units composed of artists' lofts, low to moderate income apartments, and townhouses. All of the large industrial buildings in this planning area would be

demolished to accommodate the proposed redevelopment.

In the western part of the Northwest Territories planning area, the Reduced Density Alternative would build a 162-acre links golf course, a clubhouse on six acres, and a conference center. This Alternative would also develop a 29-acre parking along the shore of the Oakland Inner Harbor. On 17 acres in the eastern part of the Northwest Territories, it would develop athletic fields that would be associated with the sports complex proposed for the Civic Core planning area. It would also reserve 58 acres as open space.

Environment Impacts

Navy analyzed the direct, indirect, and cumulative impacts of the disposal and reuse of this Federal property. The EIS addressed impacts of the Preferred Alternative, the Seaport Alternative, the Residential Alternative, the Reduced Density Alternative, and the ''No Action'' Alternative for each alternative's effects on land use, visual resources, socioeconomics, public services, utilities, cultural resources, biological resources, geology and soils, water resources, traffic and circulation, air quality, noise, and hazardous materials and waste. This Record of Decision focuses on the impacts that would likely result from implementation of the Reuse Plan, identified in the FEIS as the Preferred Alternative.

The Preferred Alternative would not have a significant impact on land use. The land uses proposed in the Preferred Alternative would be generally compatible with each other and with adjacent off-site land uses. The development of a recreational vehicle park adjacent to existing residential and recreational uses would be governed by the City of Alameda's zoning and land use ordinances.

The proposed development in four planing areas (Civic Core, Main Street Neighborhoods, Marina, and Northwest Territories) of residential, educational and commercial facilities that are not related to maritime activities could have a significant impact on land use if these facilities were built on tidelands encumbered by a public trust established by California law. The Tidelands Trust mandates that public tidelands and submerged lands must be used for the benefit of the people of California for commerce, navigation, fisheries and recreation. The proposed residential, educational and general commercial development of property in these planning areas would not be consistent with the Trust's restrictions.

The City of Alameda, however, could avoid this impact by entering into an agreement with the California State Lands Commission to impose public trust restrictions on non-trust lands or by making monetary contributions to the Kapiloff Land Bank Fund in exchange for the removal of Tidelands Trust restrictions on property in these planning areas. The Kapiloff Land Bank Fund is a mitigation fund administered by the State Lands Commission.

The Preferred Alternative would have several impacts on visual resources. The development of light industrial facilities in the Northwest Territories planning area could decrease the visual quality of this part of the Air Station from vantage point in Alameda and Oakland. However, the demolition of warehouses and the elimination of open storage areas in the North Waterfront planning area would improve views of the base from the City of Oakland's Jack London Square and from the Oakland Ferry Terminal located across the Oakland Inner Harbor. The proposed golf course and park in the Northwest Territories planning area would also enhance views of the former Air Station from the Oakland side of the Inner Harbor. Additionally, the Preferred Alternative provides public access to the Northwest Territories and Marina planning areas that will introduce new opportunities to view San Francisco Bay and the Oakland Inner Harbor.

The Preferred Alternative would not have an adverse impact on the socioeconomics of the surrounding area. In the full buildout year of 2020, there would be 2,378 residential units on the NAS Alameda and Alameda Annex properties. This would constitute about two percent of the projected housing increase in Alameda County. By the same year, implementation of the Preferred Alternative would increase the number of Alameda County residents by 19,400 persons. This would constitute only seven percent of the County's total projected population growth.

By the year 2020, this Alternative would create 18,978 jobs, which constitutes about seven percent of the projected job growth for Alameda County. The Preferred Alternative would have a greater impact on the City of Alameda, because the number of new jobs constitutes about 84 percent of the City's projected job growth.

The Preferred Alternative would not have a significant impact on schools. By the year 2020, the Preferred Alternative would generate an increase of 1,103 school age children living in the area. The new elementary school to be built under the Reuse Plan would have a 500-student capacity and would be funded by impact fees, property taxes, and other taxes generated by the reuse of NAS Alameda and the Alameda Annex.

The proposed redevelopment of NAS Alameda and the Alameda Annex would increase the demand for policy, fire, and ambulance services with the resultant requirements for increased staffing, equipment, and an additional fire station. These additional City services would be funded by a variety of sources such as impact fees, special taxes and other public revenues.

The Preferred Alternative would not have a significant impact on utilities. The Reuse Plan's projected demands for potable water and wastewater treatment would be less than the demands generated by Navy's historical usage.

Implementation of the Preferred Alternative would reduce the amount of impervious surface on the property. Consequently, the amount of stormwater would also decrease.

The amount of solid waste generated by the Preferred Alternative would increase during demolition and construction activities but would remain within the maximum daily capacity of the landfill that the City of Alameda uses. It would decrease over time as demolition and construction were completed. The City can remain in compliance with California and Alameda County waste diversion requirements by developing a solid waste management program that maximizes reuse and recycling of solid waste.

The Preferred Alternative would not have a significant impact on cultural resources. Pursuant to Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f (1994), Navy performed cultural resource surveys of NAS Alameda and the Alemeda Annex. In 1992, Navy determined that while there were no individual buildings or structures at NAS Alameda that qualified for listing on the National Register of Historic Places, an area in the center of the case containing 38 buildings and structures qualified for listing as an historic district. In a letter dated September 23, 1992, the California State Historic Preservation Officer (SHPO) concurred with Navy's determination.

In 1997, Navy and the United States Army Corps of Engineers determined that the Air Station's south jetty on the Oakland Inner Harbor was also eligible for listing on the National Register. In a letter dated October 15, 1997, the SHPO concurred that the south jetty is eligible for listing on the National Register as part of the Oakland Inner Harbor Jetties and Federal Channel Historic District.

Later in 1997, Navy determined that 49 houses in the center of the base were also eligible for listing on the National Register as part of the NAS Alameda Historic District. In a letter dated November 5, 1997, the SHPO concurred that the 49 houses were eligible for listing on the National Register as part of the Historic District.

In 1996, Navy determined that there were no buildings or structures at the Alameda Annex that were eligible for listing on the National Register. In a letter dated July 31, 1996, the SHPO concurred with Navy's determination that no buildings or structures at the Annex were eligible for listing on the National Register.

The Reuse Plan proposes to demolish six of the 87 buildings that constitute the Historic District. It is also likely that other buildings in the District will be demolished or modified or will deteriorate and that new structures will be built there. However, the Historic District as a whole will not be modified to such an extent that it is no longer eligible for listing on the National Register.

Navy has completed consultation pursuant to Section 106 of the National Historic Preservation Act with the Advisory Council on Historic Preservation and the California State Historic Preservation Officer. These consultations identified actions that Navy must take before it conveys the NAS Alameda property and actions that acquiring entities must take to avoid or mitigate adverse impacts on the eligible structures. These obligations were set forth in a Memorandum Of Agreement among Navy, the Advisory Council on Historic Preservation, and the California State Historic Preservation Officer dated October 5, 1999.

Navy will nominate the NAS Alameda Historic District for listing on the National Register of Historic Places in accordance with 36 CFR § 60.9. The City of Alameda will adopt an amendment to the Alameda Municipal Code governing Building and Housing, *i.e.,* Article VII, Historical Preservation, Section 13–21, Preservation of Historical Monuments, to require the review of proposed modifications to the exterior of historic structures. This review will ensure that the modifications are consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Additionally, the City will designate the NAS Alameda Historic District as an historic monument protected by the City's historic preservation ordinance. Navy will also request that the City of Alameda place the south jetty on the City's Historic Buildings Study List to provide it with the protection afforded such properties.

The Preferred Alternative would not have a significant impact on biological resources. In a letter dated October 3, 1997, Navy requested formal consultation with the United States Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1536 (1994). In a letter dated March 22, 1999, the Fish and Wildlife Service set forth its biological opinion that the disposal and reuse of NAS Alameda and the Alameda Annex are not likely to jeopardize the continued existence of the Federally-listed endangered California least tern or the endangered California brown pelican. The Service also concluded that since no critical habitat has been designated for either species on those parts of NAS Alameda and the Alameda Annex that lie outside the proposed Alameda National Wildlife Refuge, none will be adversely modified or destroyed.

The Service, however, conditioned its opinion on the implementation of reasonable and prudent measures to minimize incidental take of these species. These measures would protect the species and their critical habitat within the proposed Refuge from intrusion or other dangers originating outside the Refuge. Navy, the City of Alameda, and entities that may acquire property at NAS Alameda and the Alameda Annex will be bound by this requirement. To fulfill its obligation, Navy will ensure that notifications, covenants, restrictions, and agreements to protect Federally-listed endangered or threatened species are in place when the property is conveyed.

The Preferred Alternative would not have a significant impact on geology and soils. The NAS Alameda and Alameda Annex properties are located in a highly active seismic region and consist of a fill placed over submerged land or tidal flats. Thus, the property has a high potential for liquefaction, differential settlement, and dike failure. As a result, it will be necessary for developers to prepare a soils and geology report before the City of Alameda can issue grading and building permits. The City will require developers to take account of the conclusions of the soils and geology report and apply the standards of the California Building Code, the Alameda Building Code, and the Uniform Building Code to the design and construction of buildings on the former Air Station and Annex.

The Preferred Alternative would not have a significant impact on the quality of surface water. The waters of San Francisco Bay, the Oakland Inner Harbor, and the Seaplane Lagoon would not be significantly affected by the proposed grading and construction if standard soil erosion and sedimentation control measures required by existing laws and regulations were implemented.

Stormwater discharge from the proposed light industrial activities, marina, parking areas, golf course, and routine operations and maintenance in developed areas (such as the application of herbicides and pesticides) could enter and contaminate local water. Stormwater must be managed in accordance with Federal, State, and local laws and regulations, and the acquiring entities will be responsible for building adequate drainage facilities.

Certain areas at NAS Alameda and the Alameda Annex could be subject to flooding from high tides, backed up stormwater runoff, a tidal wave, and rising sea level. The City of Alameda's General Plan, dated February 5, 1991, contains a guiding policy regarding flooding, designated 8.3.b, which states that structures to be located in floodplains subject to 100-year floods should have adequate protection from floods. Additionally, in accordance with Executive Order 11988, Floodplain Management, 3 CFR 117 (1978), Navy will place a notice in the conveyance document that describes those uses that are restricted under Federal, State, and local floodplain regulations.

The Preferred Alternative should have significant impacts on traffic and circulation. By the year 2020, this Alternative would generate about 90,530 average daily trips compared with 29,000 average daily trips that were associated with Navy's use of the property. The traffic generated by the Reuse Plan would cause substantial delays during peak commuting hours at four intersections in the City of Alameda and at three intersections in the City of Oakland. Traffic congestion would increase significantly along two freeway segments and on one local roadway. During peak commuting hours, traffic congestion would also increase significantly on State Route 260 at the Webster and Posey Tubes.

The Preferred Alternative would also generate an increase in traffic on the former Air Station and Annex properties. The Reuse Plan would improve existing roadways on the base and build additional roadways to accommodate the increased traffic there.

The Preferred Alternative would have a significant impact on air quality. Carbon monoxide emissions from traffic generated by the Reuse Plan would exceed Federal and State air quality standards at two intersections, Tinker Avenue and Webster Street in the City

of Alameda and Harrison Street and Seventh Street in the City of Oakland.

Section 176(c) of the Clean Air Act, 42 U.S.C. 7506 (1994), requires Federal agencies to review their proposed activities to ensure that these activities do not hamper local efforts to control air pollution. Section 176(c) prohibits Federal agencies from conducting activities in air quality areas such as the San Francisco Bay Area that do not meet one or more of the national standards for ambient air quality, unless the proposed activities conform to an approved implementation plan. The United States Environmental Protection Agency regulations implementing Section 176(c) recognize certain categorically exempt activities. Conveyance of title to real property and certain leases are categorically exempt activities. 40 CFR § 93.153(c)(2) (xiv) and (xix). Therefore, the disposal of NAS Alameda and the Alameda Annex will not require Navy to conduct a conformity determination.

Navy holds Bay Area Air Quality Management District (BAAQMD) air emission reduction credits (ERCs) for stationary air emission sources such as boilers and furnaces, paint spray booths, fuel storage facilities, and jet engine test cells that historically generated air emissions at NAS Alameda. These annual ERCs include 52.4 tons of precursor organic compounds, 29.9 tons of nitrogen oxides, 61 tons of non-precursor organic compounds, 6.5 tons of particulate matter (PM10), 25.3 tons of carbon monoxide, and 3.1 tons of sulfur oxides.

The BAAQMD Emissions Bank credits can be withdrawn to offset air emissions from new stationary sources. Navy has allocated to ARRA credits for 30 tons of precursor organic compounds to support interim leasing requirements and redevelopment of the base. Navy will retain credits for 15.9 tons of precursor organic compounds and 29.9 tons of nitrogen oxides to meet any future permit requirements for Department of Defense facilities and activities. If there are no future Department of Defense needs, the credits will be reallocated. The remaining credits for precursor organic compounds were previously applied to permitted Navy stationary sources that were either demolished or moved to another base and are no longer available for future allocation.

There were mobile source emissions at NAS Alameda and the Alameda Annex associated with sources such as motor vehicles and aircraft and ship operations. These mobile emission sources annually produced about 169 tons of reactive organic compounds, 182 tons of nitrogen oxides, 859 tons of carbon monoxide, ten tons of sulfur oxides, and 30 tons of particulate matter (PM10).

The mobile source emission reductions resulting from the closure of NAS Alameda and the Alameda Annex can be applied to offset emissions from other Federal mobile sources in the area to satisfy Clean Air Act conformity requirements. Navy will retain these mobile source emission offsets to meet future Clean Air Act conformity requirements.

The Preferred Alternative would not have a significant impact on noise. Exposure to noise from aircraft operations would be eliminated, because there would no longer be any aircraft operations on the property. Ambient noise levels would not change substantially as a result of the increased vehicular traffic. Noise levels in the vicinity of NAS Alameda and the Alameda Annex are typical of an urban neighborhood and are already high. Noise arising out of demolition and construction activities would be governed by the City of Alameda's noise ordinance.

Hazardous materials and hazardous waste that may be used and generated by the Preferred Alternative would not cause any significant adverse impacts. The quantity of hazardous materials used, stored, and disposed of and the quantity of hazardous waste generated on the properties would be less under the Preferred Alternative than during Navy's use of NAS Alameda and the Alameda Annex. Hazardous materials used and hazardous waste generated by the Reuse Plan will be managed in accordance with Federal and State laws and regulations.

Implementation of the Preferred Alternative would not have an impact on public health and safety. Navy will inform future property owners about the environmental condition of the property and may, when appropriate, include restrictions, notifications, or covenants in deeds to ensure the protection of human health and the environment in light of the intended use of the property.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 3 CFR 859 (1995) requires that Navy determine whether any low income and minority populations will experience disproportionately high and adverse human health or environmental effects from the proposed action. Navy analyzed the impacts on low income and minority populations pursuant to Executive Order 12898. The FEIS addressed the potential environmental, social, and economic impacts associated with the disposal of NAS Alameda and the Alameda Annex and reuse of the properties under the various proposed alternatives. Minority and low income populations residing within the region would not be disproportionately affected. Indeed, the employment opportunities, housing, and recreational resources generated by the Reuse Plan would have beneficial effects.

Navy also analyzed the impacts on children pursuant to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks, 3 CFR 198 (1998). Under the Preferred Alternative, the largest concentration of children would be present in the residential, educational, and recreational areas. The Preferred Alternative would not pose any disproportionate environmental health or safety risks to children.

Mitigation

Implementation of Navy's decision to dispose of NAS Alameda and the Alameda Annex does not require Navy to implement any mitigation measures. Navy will take certain actions to implement existing agreements and regulations. These actions were treated in the FEIS as agreements or regulatory requirements rather than as mitigation. Before conveying any property at NAS Alameda, navy will nominate the NAS Alameda Historic District for listing on the National Register of Historic Places.

The FEIS identified and discussed those actions that will be necessary to mitigate the impacts associated with the reuse and redevelopment of NAS Alameda and the Alameda Annex. The acquiring entities, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for implementing necessary mitigation measures.

Comments Received on the FEIS

Navy received comments on the FEIS from two State agencies, three local government agencies, three private organizations, and one person. The State agencies were the Governor's Office of Planning and Research and the Department of Parks and Recreation's Office of Historic Preservation. The local agencies were the City of Oakland, the Port of Oakland, and the East Bay Municipal Utility District. The private organizations were the Golden Gate Audubon Society, the San Francisco Bay Chapter of the Sierra Club, and Arc Ecology. These comments concerned issues already discussed in the FEIS and do not require further clarification.

Regulations Governing the Disposal Decision

Since the proposed action contemplates the disposal of NAS Alameda under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note (1994), Navy's decision was based upon the environmental analysis in the FEIS and application of the standards set forth in the DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR parts 174 and 175. Navy's decision to dispose of the Alameda Annex was based upon the environmental analysis in the FEIS and Section 2834(b) of Public Law 102–484, as amended by Section 2833 of Public Law 103–160, Section 2821 of Public Law 103–337, and Section 2867 of Public Law 104–106.

Section 104–47.303–1 of the FPMR requires that disposal of Federal property benefit the Federal Government and constitute the ''highest and best use'' of the property. Section 101–47.4909 of the FPMR defines the ''highest and best use'' as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The ''highest and best use'' determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local and land use regulations, including zoning and subdivision regulations, and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the ''highest and best use'' of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of the DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth in Part 101–47 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of base closure property closed under the DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.,* the economic development conveyance authority established in 1993 by Section 2905(b)(4) of the DBCRA or the authority provided in Section 2867 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, may Navy apply disposal procedures other than those in the FPMR.

In Section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by base closure, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In Section 2903(c) of Public Law 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under Section 2905(b)(2)(E) of the DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in Section 174.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the LRA's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, as reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, Section 175.7(d)(3) of the DoD Rule provides that the LRA's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484 (1994), as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR Sec. 101–47.303–2); by negotiated sale (FPMR Sec. 101–47.304–9); and by competitive sale (FPMR Sec. 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property. The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid, are left to the Federal agency's discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion

The LRA's proposed reuse of NAS Alameda, reflected in the Reuse Plan, is consistent with the requirements of the FPMR and Section 174.4 of the DoD Rule. The LRA has determined in its Reuse Plan that the property should be used for various purposes including residential, educational, industrial, commercial, and park and recreational activities. The property's location, physical characteristics, and existing infrastructure as well as the current uses of adjacent property make it appropriate for the proposed uses.

The proposed reuse of NAS Alameda responds to local economic conditions, promotes rapid economic recovery from the impact of the closure of the base, and its consistent with President Clinton's Five-Part Plan For Revitalizing Base Closure Communities, which emphasizes local economic redevelopment and creation of new jobs as the means to revitalize these communities. 32 CFR parts 174 and 175, 59 FR 16123 (1994).

Although the ''No Action'' Alternative has less potential for causing adverse environmental impacts, this Alternative would not take advantage of the locations, physical characteristics, and infrastructure of the Air Station and Annex or the current uses of adjacent

property. Additionally, it would not foster local economic redevelopment of the base.

The acquiring entities, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for adopting practicable means to avoid or minimize environmental harm that may result form implementing the Reuse Plan.

Accordingly, Navy will dispose of the surplus Federal property at NAS Alameda in a manner that is consistent with the Alameda Reuse and Redevelopment Authority's Reuse Plan for the property. Navy plans to dispose of the Federal property at the Alameda Annex under the authority of Section 2867 of Public Law 104–106.

Dated: February 29, 2000.

William J. Cassidy, Jr.,

Deputy Assistant Secretary of the Navy (Conversion And Redevelopment).

[FR Doc. 00–5824 Filed 3–8–00; 8:45 am]

BILLING CODE 3510–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is to conduct the final briefing of the Technology Hedging Strategies Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to proposed Navy Technology Hedging Strategies.

DATES: The meeting will be held on March 23, 2000 from 10:30 am to 11:30 am.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: February 29, 2000.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 00–5700 Filed 3–8–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is to conduct the final briefing of the Warfare in the Information Age Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to proposed Navy strategies for warfare in the Information Age.

DATES: The meeting will be held on March 22, 2000 from 10 a.m. to 11 a.m.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: February 29, 2000.,

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 00–5701 Filed 3–8–00; 8:45 am]

BILLING CODE 3810–FF–U

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

TIME AND DATE OF MEETING: 6:00 p.m., April 5, 2000.

PLACE: American Museum of Science and Energy (AMSE), Lecture Room, 300 South Tulane, Avenue, Oak Ridge, TN 37830.

STATUS: Open. While the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: The Board is visiting the Oak Ridge Y–12 Plant as a part of its oversight of the Department of Energy's (DOE) defense nuclear facility safety management program. The Board's enabling legislation requires health and safety oversight encompassing design, construction, operation and decommissioning activities.

The Board wishes also to avail itself of the opportunity of this visit to meet with the stakeholders and local members of the public. The session is intended to be informal and to provide an opportunity for members of the public, DOE, and its contractor employees or their representatives to comment on or provide information directly to the Board regarding matters affecting health or safety at Oak Ridge.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

Dated: March 6, 2000.

John T. Conway,

Chairman.

[FR Doc. 00–5862 Filed 3–6–00; 5:00 pm]

BILLING CODE 3670–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposed three-year clearance with no changes to the forms EIA–800–804, 807, 810–814, 816, 817, 819M, and 820 of the EIA's Petroleum Supply Reporting System.

DATES: Written comments must be submitted on or before May 8, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Ms. Stefanie Palumbo, Energy Information Administration, EI–42, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585 or by phone at (202) 586–6866, by e-mail stefanie.palumbo@eia.doe.gov, or by FAX (202) 586–5846.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Stefanie Palumbo at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(h) of the Paperwork Reduction Act of 1995.

The Petroleum Supply Reporting System collects data necessary for determining the supply and disposition of crude oil, finished petroleum products, and natural gas liquids. These data are published by the Energy Information Administration in the Weekly Petroleum Status Report, Petroleum Supply Monthly, and the Petroleum Supply Annual. Respondents to the surveys are producers of oxygenates, operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tanker and barge operators, and oil importers.

II. Current Actions

The Energy Information Administration requests a three-year extension with no changes to the existing Petroleum Supply Reporting System survey collection forms.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average as follows. The EIA allows for respondents to report manually or by using the PC Electronic Data Reporting Option (PEDRO) for all forms excluding the EIA–807, EIA–819M, and the EIA–820. EIA believes that reporting by using PEDRO takes less time than manual reporting. Estimated public reporting burden for the collections that utilize:

PEDRO Submission:

—EIA–800, 1 hour
—EIA–801, 30 minutes
—EIA–802, 30 minutes
—EIA–803, 15 minutes
—EIA–804, 1 hour
—EIA–810, 2 hours
—EIA–811, 1 hour
—EIA–812, 1 hour 30 minutes
—EIA–813, 45 minutes
—EIA–814, 1 hour 15 minutes
—EIA–816, 30 minutes
—EIA–817, 1 hour.

The public reporting burden for the average report prepared:

Manual Submission

—EIA–800, 1 hour 15 minutes
—EIA–801, 45 minutes
—EIA–802, 45 minutes
—EIA–803, 30 minutes
—EIA–804, 1 hour 15 minutes
—EIA–807, 1 hour for weekly reports from October through March, and 30 minutes for monthly reports from April through September
—EIA–810, 3 hours 45 minutes
—EIA–811, 1 hour 45 minutes
—EIA–812, 2 hours 15 minutes
—EIA–813, 1 hour 30 minutes
—EIA–814, 2 hours
—EIA–816, 45 minutes
—EIA–817, 1 hour 45 minutes
—EIA–819M, 30 minutes
—EIA–820, 2 hours.

The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. Please comment on the accuracy of the estimate.

D. The agency estimates that the only costs to the respondents are for the time it will take them to complete the collection. Please comment if respondents will incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection.

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, March 3,2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–5779 Filed 3–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–191–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 2000.

Take notice that on February 29, 2000, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective March 1, 2000:

Forty-first Revised Sheet No. 8
Forty-first Revised Sheet No. 9
Fortieth Revised Sheet No. 13
Forty-ninth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.6 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota).

ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%) ANR also advises that the proposed changes would increase current quarterly Above-Market Dakota Cost recoveries from $1,796.681 to $2,586,210.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 or the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5692 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

[Docket No. RP00–192–000]

MARCH 3, 2000: Take notice that on February 29, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, proposed to become effective March 1, 2000.

Fiftieth Revised Sheet No. 18

ANR states that the above-referenced tariff sheet is being filed to implement the annual reconciliation of the recovery of its Above-Market Dakota Costs, as required by its tariff recovery mechanism. ANR advises that the filing proposes a reservation surcharge adjustment of $0.003 applicable to its currently effective, firm service Rate Schedules. This surcharge is proposed to recover from ANR's customers, over the twelve month period of March 1, 2000 to February 28, 2001, the $218,425 of Above-Market Dakota Cost undercollections, inclusive of interest, which are reflected in the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5693 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–193–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

March 3, 2000.

Take notice that, on February 29, 2000, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixteenth Revised Sheet No. 11A, with an effective date of April 1, 2000.

CIG states that the tariff is being filed to reflect a decrease in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 1.31% to 1.01% effective April 1, 2000.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5694 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–194–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 2000.

Take notice that on February 29, 2000, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of April 1, 2000.

Thirty-Eighth Revised Sheet No. 8A
Thirtieth Revised Sheet No. 8A.01
Thirtieth Revised Sheet No. 8A.02
Thirty-Fourth Revised Sheet No. 8B
Twenty-Seventh Revised Sheet No. 8B.01

FGT states that the tariff sheets listed above are being filed pursuant to Section 27 of the General Terms and Conditions (GTC) of FGT's Tariff which provides for the recovery by FGT of gas used in the operation of its system and gas lost from the system or otherwise unaccounted for. The fuel reimbursement charges pursuant to Section 27 consist of the Fuel Reimbursement Charge Percentage (FRCP), designed to recover current fuel usage on an in-kind basis, and the Unit Fuel Surcharge (UFS), designed to recover or refund previous under or overcollections on a cash basis. Both the FRCP and the UFS are applicable to Market Area deliveries and are effective for seasonal periods, changing effective each April 1 (for the Summer Period) and each October 1 (for the Winter Period).

FGT states that it is filing to establish an FRCP of 2.99% to become effective April 1, 2000 based on the actual company fuel use, lost and unaccounted for volumes and Market Area deliveries for the period from April 1, 1999 through September 30, 1999. FGT states that the proposed FRCP of 2.99%, to become effective April 1, 2000, is a decrease of 0.01% from the currently effective FRCP of 3.00%. Additionally, FGT states that it is filing to establish a UFS of $0.0019 per MMBtu, to become effective April 1, 2000. The proposed UFS is a decrease of $0.0009 compared to the currently effective UFS of $0.0028.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protesants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc. fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5695 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP00–93–000, CP00–94–000 and CP00–95–000]

Honeoye Storage Corporation; Notice of Application

March 2, 2000.

Take notice that on February 22, 2000 Honeoye Storage Corporation (Honeoye) c/o EHA, One State Street, Suite 1200, Boston, Massachusetts 02109, filed an application in the above docket, pursuant to sections 7(b) and 7(c) of the Natural Gas Act as amended (NGA), 15 USC 717f(b) and 717f(c), and Parts 157 and 284 of the Federal Energy Regulatory Commission's regulations, seeking:

in CPOO–93–000

(1) to abandon service to Providence Gas Company (Providence),

(2) to construct, install, own, operate and maintain certain facilities that will permit Honeoye to increase the certificated capacity and deliverability of the Honeoye storage field located in Ontario County, New York;

in CP00–94–000

(3) to obtain a blanket certificate of public convenience and necessity pursuant to Subpart G of Part 284 of the Commission's regulations authorizing Honeoye to provide firm and interruptible storage services on a self-implementing basis at market-based rates with pregranted abandonment authorization; and

in CP00–95–000

(4) to obtain a blanket certificate under Subpart F of Part 157 of the Commission's regulations authorizing the construction and operation of certain facilities and certain certificate amendments and abandonment under Section 7 of the NGA;

all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

Honeoye has requested that the Commission make the proposed abandonment authorization effective March 31, 2000 and issue the proposed authorizations by May 31, 2000 in order to permit Honeoye to proceed with construction on or before June 30, 2000.

Honeoye states that it currently has a certificated obligation to provide Providence a Maximum Daily Withdrawal Quantity (MDWQ) of 5,100 Dth/d and Maximum Quantity Stored (MQS) of 613.2 MDth. Providence has notified Honeoye that it wishes to terminate its storage service agreement with Honeoye effective March 31, 2000.

Honeoye states that it proposes to construct, install, own, operate and maintain certain additional facilities necessary to increase the maximum stabilized pressure of the Honeoye Storage Field from 927 psia to 1100 psia, a pressure well below the hydrostatic pressure of the field. This increase in pressure will permit Honeoye to increase the certificated capacity of the Honeoye Storage Field by 1,812 MDth and the certificated deliverability by 15,000 Dth/d. The activities necessary to effectuate the proposed expansion are as follows:

(1) replace the internal components of two of Honeoye's three existing compressors to increase maximum allowable operating pressure from 915 psia to 1045 psia;

(2) pressure test Honeoye's existing field pipeline system to increase the certified maximum allowable operating pressure from 915 psia to 1045 psia;

(3) pressure test Honeoye's existing mainline pipeline system to increase the certified maximum allowable operating pressure from 900 psia to 1045 psia; and

(4) add 781,482 Dth of base gas to the Honeoye field, consisting of 481,482 Dth to replace base gas previously supplied by Providence and add 300,000 Dth of new base gas;

Honeoye proposes that Honeoye, and not its existing Part 157 customers, will bear the full costs of the exposed expansion. Therefore, Honeoye states that its proposed expansion will have no impact on the rates or terms of service to Part 157 customers.

Honeoye requests a blanket certificate pursuant to Subpart G of Part 284 of the Commission's regulations authorizing Honeoye to provide firm and interruptible services on a self-implementing basis at market-based rates with pre-granted abandonment. Honeoye proposes to offer open access services using (i) the 613.2 MDth of storage capacity and 5,100 Dth/d of firm deliverability that will become available when the Commission grants Honeoye authorization to abandon service to Providence, and (ii) the 1,812.8 MDth of storage capacity and 15,000 Dth/d of firm deliverability that will be created once the construction described above is completed.

Honeoye request that the Commission authorize Honeoye to charge market based rates for Part 284 Services. Honeoye's existing storage capacity represents less than two percent of the existing storage capacity in the New York and Pennsylvania region. Honeoye's storage deliverability represents less than one percent of the existing New York and Pennsylvania storage deliverability. Therefore, under applicable Commission policy, Honeoye states that it cannot withhold or restrict services or unduly discriminate with respect to prices or terms and conditions.

Honeoye also requests that with respect to the Open Access Service, the Commission waive the requirements of Section 284.8(d) of the Commission's Regulations. These regulations require that all storage services provided under Section 284 charge reservation fees which recover all fixed costs based on the straight fixed-variable rate design methodology. Honeoye states that if the Commission approves this application for market-based rates, compliance with this Section would be unnecessary. Similarly, Honeoye requests partial waiver of Section 157.14 of the Commission's regulations in order to permit Honeoye to omit Exhibits K, N, and O from its Application. Honeoye states these exhibits will also be unnecessary if Honeoye's request to charge market-based rates is granted.

Any questions regarding this application should be directed to Richard A. Norman, Vice President, Honeoye Storage Corporation, c/o EHA One State Street, Suite 1200, Boston, MA 02109 (617) 367–0032.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 23, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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 385.211 and 385.214) 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.

A person obtaining intervener status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other interveners. An intervener can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervener must serve copies of comments or any other filing it makes with the Commission to every other intervener in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court. The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervener status.

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 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 permission and approval for the proposed abandonment is 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 Honeoye to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–5549 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–196–000]

KO Transmission Company; Notice of Tariff Filing

March 3, 2000.

Take notice that on March 1, 2000, KO Transmission Company (KO Transmission) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, bearing a proposed effective date of April 1, 2000.

Eighth Revised Sheet No. 10

KO Transmission states that the purpose of the filing is to revise its fuel retainage percentage consistent with Section 24 of the General Terms and Conditions of its Tariff. According to KO Transmission, Columbia Gas Transmission Corporation (Columbia) operates and maintains a portion of KO Transmission facilities pursuant to the Operating Agreement referenced in its Tariff at Original Sheet No. 7. Pursuant to that Operating Agreement, Columbia retains certain volumes associated with gas transported on behalf of KO Transmission. On February 28, 2000,

Columbia notified KO Transmission that under terms of the Operating Agreement, KO Transmission will be subject to a 0.71% retainage. Accordingly, KO Transmission states that the instant filing tracks this fuel retainage.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5697 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1981]

Oconto Electric Cooperative; Notice of Authorization for Continued Project Operation

March 3, 2000.

On February 25, 1998, Oconto Electric Cooperative, licensee for the Stiles Project No. 1981, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 1981 is located on the Oconto River in Oconto County, Wisconsin.

The license for Project No. 1981 was issued for a period ending February 29, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No.1981 is issued to Oconto Electric Cooperative for a period effective March 1, 2000, through February 28, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before February 28, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Oconto Electric Cooperative is authorized to continue operation of the Stiles Project No. 1981 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5683 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2659]

Pacific Corp; Notice of Authorization for Continued Project Operation

March 3, 2000.

On February 25, 1998, PacificCorp, licensee for the Powerdale Project No. 2659, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2659 is located on the Hood River in Hood River County, Oregon.

The license for Project No. 2659 was issued for a period ending February 28, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2659 is issued to PacificCorp for a period effective February 29, 2000, through February 28, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before February 28, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that PacificCorp is authorized to continue operation of the Powerdale Project No. 2659 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5687 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–59–001]

Petal Gas Storage, L.L.C.; Notice of Amendment

March 2, 2000.

Take notice on February 24, 2000, Petal Gas Storage, L.L.C, (Petal),[1] 229 Milam Street, Shreveport, Louisiana 71101, filed in Docket No. CP00–59–001, an amendment to its application in Docket No. CP00–59–000, for a certificate of public convenience and necessity, pursuant to Section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, to construct and operate storage, pipeline, compression, and appurtenant facilities all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Mr. David Hayden, Petal Gas Storage, L.L.C., 229 Milam Street, Shreveport, Louisiana 71101 or call (318) 677–5511.

By this amendment Petal seeks to withdraw from consideration all of the facilities proposed in its original application except for:

(1) 5.5 miles of 36-inch diameter pipeline that will loop Petal's existing 5.5 mile, 20-inch diameter storage header in Forrest County, Mississippi; and

(2) Four compressor units totaling 20,000 horsepower together with valves and appurtenant flowlines at the Petal storage facility in Forrest County, Mississippi;

In addition Petal now proposes to expand its existing interconnect with Tennessee Gas Pipeline Company (Tennessee), also located in Forest County, Mississippi. Petal proposes an in-service date of May 31, 2001 for the facilities.

Petal also no longer seeks authority to provide transportation pursuant to Part 284 and withdraws for consideration the pro-forma transportation tariff contained in the original application. However, Petal states that it still seeks approval of certain pro-forma changes to Volume 1, Part A of its effective FERC storage services tariff. Petal intends that the changes will become effective upon the in-service date of the facilities. Petal says it intends to continue charging market-based rates for storage services and does not seek any changes in its current authorization to charge market-based rates. Additionally, Petal requests certain waivers of the Commission's regulations.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before March 23, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 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 NGA (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. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. 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.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties, or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters of those requesting intervenor status.

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 NGA 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 is 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 provided for, unless otherwise advised, it will be unnecessary for Petal to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–5548 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

[1] Effective January 4, 2000, Petal Gas Storage Company converted to Petal Gas Storage, L.L.C., a Delaware limited liability company, in accordance with the provisions of Section 18–214 of the Delaware Limited Liability Company Act.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–051]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 2000.

Take notice that on February 29, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective March 1, 2000:

Second Revised Sheet No. 8F
Third Revised Sheet No. 8H
Third Revised Sheet No. 8L

REGT states that the purpose of this filing is to reflect the implementation of two new negotiated rate contracts and a change to an existing negotiated rate contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5689 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–189–000]

Southern Natural Gas Company; Notice of Cost Recovery Filing

March 3, 2000.

Take notice that on February 29, 2000, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of April 1, 2000.

Fiftieth Revised Sheet No. 14
Seventy-First Revised Sheet No. 15
Fiftieth Revised Sheet No. 16
Seventy-First Revised Sheet No. 17

Southern sets forth in the filing its revised demand surcharges for the recovery of Order No. 636 transition costs associated with Southern LNG Inc. from the period November 1, 1999 through December 31, 1999. These costs have arisen as a direct results of restructuring under Order No. 636.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5690 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–195–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

March 3, 2000.

Take notice that on March 1, 2000, pursuant to 18 CFR 154.7 and 154.203, and in compliance with the Commission letter order issued May 26, 1999 (May 26 order), in Docket No. RP99–106–003, TransColorado Gas Transmission Company (TransColorado) tendered for filings its first annual Fuel Gas Reimbursement Percentage (FGRP) filings as provided by Section 12.8 of its FERC Gas Tariff (Fuel Gas Reimbursement). TransColorado has requested that the Commission find that TransColorado's initial 1% FGRP was the appropriate level for the period March 31, 1999, through March 31, 2000.

TransColorado also tendered for filing and acceptance, to be effective April 1, 2000, Third Revised Sheet No. 247 to Original Volume No. 1 of its FERC Gas Tariff that sets TransColorado's FGRP at 1.4% and suspends all other aspects of TransColorado's FGRP tariff provision until such time as TransColorado's transportation quantities increase and stabilize. TransColorado further proposed that its FGRP tariff provision be reviewed in connection with its February 1, 2001, cost and revenue report that is required to be filed in compliance with the Commission letter order dated January 14, 2000, (January 14 order) in Docket Nos. RP99–106–000 and 004.

TransColorado stated that a copy of this filing has been served upon its customers, the New Mexico Public Utilities Commission and the Colorado Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5696 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2077–016]

USGen New England Inc.; Notice Extending Deadline for Filing Comments, Final Terms and Conditions, Recommendations and Prescriptions, and Requesting Reply Comments

March 3, 2000.

On November 26, 1999, the Appalachian Mountain Club, Connecticut River Joint Commission, Connecticut River Watershed Council, Conservation Law Foundation, New Hampshire Rivers Council, Trout Unlimited Vermont Chapter, and Trout Unlimited New Hampshire Chapter (NGOs),[1] collectively, requested an extension to June 1, 2000, for filing comments, final terms and conditions, and recommendations and prescriptions for the Fifteen Mile Falls Project, located on the Connecticut River, in Grafton and Coos Counties, New Hampshire, and Caledonia and Essex Counties, Vermont. The NGOs referenced an agreement between the settlement's stakeholders and USGen to complete draft management plans governing Fisheries, Forest and

[1] The NGOs are also signatories to the Settlement Agreement for the project.

Wildlife, Threatened and Endangered Species, and Recreation by June 1, 2000. The NGOs then requested an extension of time, until June 1, 2000, to file comments on the applicant-prepared environmental assessment (APEA), and final terms and conditions, prescriptions and recommendations for the new license.

In response, the Commission, by notice of January 12, 2000,[2] granted an extension of time, to June 1, 2000, for the filing of comments, final terms and conditions, prescriptions and recommendations, but only concerning the subject of the draft management plans. The deadline for filing other comments, final terms and conditions, prescriptions and recommendations, remained January 31, 2000, as had been established by notice of November 22, 1999.[3]

On January 31, 2000, the NGOs renewed the request for extension to June 1, 2000. The NGOs stated that the results of the studies leading to the management plans will bear on more than just the management plans, and will affect conditions identified in the settlement agreement. The request is supported by the U.S. Fish and Wildlife Service and the Vermont Agency for Natural Resources, two resource agencies that have statutory authority to make recommendations under Section 10(j) of the Federal Power Act.

The Commission is concerned with the swift progress of proceedings under the Alternative Licensing Process (ALP). The goal of the ALP is to resolve issues during pre-filing consultation in a collaborative manner so that the Commission may accelerate the environmental review process and licenses may receive speedy review of the filed license application. Therefore, the Commission carefully scrutinizes delays or time extension requests for license applications prepared under the ALP.

In this instance, we recognize the close connection between the management plans and other aspects of the license application, and the benefit to the stakeholders of resolving as many issues as possible before they submit their prescriptions, final terms and conditions, recommendations and comments. We will therefore, pursuant to Rule 2008 of the Commission's Rules of Practice and Procedure,[4] extend the deadline for filing all prescriptions, final terms and conditions, recommendations and comments to June 1, 2000.

The applicant contact is Mr. Cleve Kapala, USGen New England, Inc., 46 Centerra Parkway, Lebanon, NH 03766. The FERC contact is William Guey-Lee, E-mail address: william.gueylee@ferc.fed.us, or telephone (202) 219–2808.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St. NE, Washington, DC 20426. The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, the intervenor must also serve a copy of the document on that resource agency.

All filing must: (1) bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' ''PRESCRIPTIONS,'' or ''REPLY COMMENTS;'' (2) set forth in the heading the name of the applicant and the project number of the application and APEA to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5684 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

[2] 65 FR 2943 (2000).

[3] 64 FR 66632 (1999).

[4] 18 CFR 385.2008.

DEPARTMENT OF ENERGY

Federal Energy Regulation Commission

[Docket No. RP00–190–000]

Viking Gas Transmission Company; Notice of Tariff Filing

March 3, 2000.

Take notice that on February 29, 2000, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following tariff sheets to become effective April 1, 2000:

Fourth Revised Sheet No. 6B

Viking states that the purpose of this filing is to make Viking's annual adjustment to its Load Management Cost Reconciliation Adjustment in accordance with Section 154.403 of the Commission's Rules and Regulations, 18 CFR § 154.403 (1998) and Section 27 of the General Terms and Conditions of Viking's FERC Gas Tariff.

Pursuant to Rule 207 of the Commission's Rules and Regulations, 18 CFR § 385,207 (1999), Viking also respectfully petitions the Commission for a limited waiver of its FERC Gas Tariff to allow Viking to defer surcharging the Load Management Deferred Account Balance and to surcharge only the carrying charges associated with that balance at this time.

If the Commission declines to grant Viking's request, then Viking respectfully submits for filing an original and fourteen copies of the tariff sheet listed below to be part of its FERC Gas Tariff, First Revised Volume No. 1 to be effective on April 1, 2000:

Alternate Fourth Revised Sheet No. 6B

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5691 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2336–041 Georgia]

Georgia Power Company; Notice of Availability of Final Environmental Assessment

March 2, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing has prepared a final environmental assessment (FEA) for Georgia Power Company's proposal to permit Lambert Sand and Gravel Company to remove sediments by mechanical dredging from the Yellow and South River sections of the project reservoir (Lake Jackson). The Lloyd Shoals Project is located on the Ocumulgee River and its tributaries in Henry, Butts, Jasper, and Newton Counties, Georgia.

The FEA is attached to a Commission order issued on February 15, 2000 for the above application. Copies of the FEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. The FEA may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). In the FEA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

David P. Boergers,

Secretary.

[FR Doc. 00–5555 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2230–028]

City and Borough of Sitka, Alaska; Notice of Availability of Environmental Assessment

March 3, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the City and Borough of Sitka's application filed on November 1, 1999, requesting the Commission's authorization to permit the Global Water Corporation to construct and operate a new, buried, raw water pipeline across project lands, and has prepared an Environmental Assessment (EA) for the proposed action.

The proposed project would include the following specific elements: (1) a tap into the City's existing Pulp Mill Feeder Unit powerhouse tailrace structure (diffusion chamber); and (2) a new 20-inch-diameter, raw water pipeline that would affect approximately 200 feet of City-owned project land located adjacent to the existing powerhouse access road. The proposed pipeline then would extend across non-project lands owned by the State of Alaska situated adjacent to Sawmill Creek Road, and would terminate at Silver Bay where a new mooring facility for loading bulk water into tanker ships would be constructed.

After completion, the pipeline would be used to transport approximately 11,800 acre-feet per year (10.6 million gallons per day) of water from the Blue Lake reservoir to tankers for shipment to purchasers. Blue Lake Project, which was licensed in April 1958, includes a 205-foot-high, concrete arch dam, 1,225-acre reservoir, three powerhouses, and appurtenant facilities, all of which are located within the Borough of Sitka, Alaska.

In the EA, staff indicates that construction of the subject raw water pipeline would result in some minor, short-term adverse impacts to area soils and wildlife. Further, the document indicates that licensee's proposed water withdrawals from Blue Lake reservoir would not result in any major, long-term adverse environmental impacts provided that the order approving the proposed project prohibits water withdrawals when: (1) the elevation of Blue Lake reservoir is at or below the licensee's established rule curve values; and (2) the withdrawals would interfere with the provision of minimum flows in Sawmill Creek, which are required by Article 401 of the existing license. The EA concludes that approval of the proposed amendment of license with the aforementioned conditions does not constitute a major federal action significantly affecting the quality of the human environment.

The EA has been attached to and made part of an Order Approving Non-Project Use of Project Lands and Waters, issued February 23, 2000, for the Blue Lake Hydroelectric Project, FERC No. 2230–028. See 90 FERC ¶ 62,132. Also, the EA is available for inspection at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. Further, the document may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

For further information, please contact Jim Haimes at (202) 219–2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5685 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–82–000]

Williams Gas Pipelines Central, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Pleasant Hill Power Plant Project and Request for Comments on Environmental Issues

March 2, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Pleasant Hill Power Plant Project involving the construction and operation of natural gas transmission facilities by Williams Gas Pipelines Central, Inc. (Williams) in Franklin County, Kansas and Cass and Johnson Counties, Missouri.[1] These proposed facilities would consist of about 1.5 miles of 24-inch-diameter pipeline and 2,890 horsepower (hp) of compression. This EA will be used by the Commission in its decision-making process to determine whether the

[1] Williams' application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to provide an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Williams wants to expand the capacity of its facilities in Kansas and Missouri to provide an additional 44,200 Dekatherms per day (Dth/d) of natural gas in the winter and an additional 88,200 Dth/d of natural gas in the summary to the UtiliCorp United, Inc. (Utilicorp) Pleasant Hill power plant in Cass County, Missouri; to various Utilicorp local distribution systems in western Missouri; and to U.S. Energy Services in Pettis County, Missouri. Williams seeks authority to:

- Construct and operate about 1.5 miles of 24-inch-diameter pipeline, check measurement, and regulation from Williams' Ottawa crossover to the Ottawa Compressor Station in Franklin County, Kansas;
- Upgrade two existing compressor units from 1,350-hp each to 2,000-hp each and add clean-burn technology at its existing Peculiar Compressor Station in Cass County, Missouri; and
- Install an additional 1,590-hp turbine compressor at its existing Peculiar Compressor Station in Cass County, Missouri.

In addition, Williams requests Commission authorization to convert the regulatory authority of an 800-hp compressor unit at its existing Concordia Compressor Station in Johnson County, Missouri, from NGPA Section 311 to Part 284.

The location of the project facilities is shown in appendix 2.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Land Requirements for Construction

Construction of the proposed pipeline would disturb about 13.6 acres of land in Franklin County, Kansas. Following construction, about 12.1 acres would be maintained as permanent right-of-way. This figure includes 5.0 acres of newly disturbed land and 7.1 acres of existing Williams' right-of-way. The remaining 1.5 acres of land would be restored and allowed to revert to its former use. An additional 4.9 acres would be necessary for extra work space, which would be restored to its prior condition following construction. All construction at Williams' Peculiar Compressor Station in Cass County, Missouri would occur within the existing site.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Air quality and noise

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 4.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded.

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP00–082–000; and
- Mail your comments so that they will be received in Washington, DC on or before April 3, 2000.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in the proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–5547 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent Not To File Application for a New License

MARCH 2, 2000. Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent Not to File an Application for New License.

b. *Project No.:* 477.

c. *Date filed:* November 12, 1999.

d. *Submitted By:* Portland General Electric Company, current licensee.

e. *Name of Project:* Bull Run.

f. *Location:* On the Sandy, Little Sandy, and Bull Run Rivers in Clackamas County, Oregon.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the licensee at 121 SW Salmon Street, Portland, Oregon 97204. Interested parties can contact Julie A. Keil, Director, Hydro Licensing, Portland General Electric Company, on (503) 464–8864.

i. *FERC Contact:* Hector Perez, (202) 219–2843, *hector.perez@ferc.fed.us.*

j. *Effective Date of Current License:* May 1, 1980.

k. *Expiration Date of Current License:* November 16, 2004.

l. *The project consists of the following existing facilities:* (1) The 40-foot-high and 345-foot-long roller compacted concrete Marmot Diversion Dam, on the Sandy River, with a concrete diversion structure at the right abutment; (2) a 16,280-foot-long flowline consisting of concrete-lined canals, tunnel sections, and a concrete flume; (3) the Little Sandy Dam; (4) a 16,810-foot-long flow line consisting of a treated wood-box flume, concrete-lined canals, and a tunnel section; (5) Roslyn Lake, with a usable storage capacity of 928 acre-feet at elevation 655.27 feet USGS, formed by approximately 8,000 feet of homogeneous earth fill dikes with a maximum height of 45 feet; (6) two 1,400-foot-long penstocks from the outlet structure of Roslyn Lake; (7) a powerhouse containing four units with a rated capacity of 5,250 kW each; (8) a transformer building adjacent to the powerhouse; (9) a 2.8-mile-long transmission line; and (10) appurtenant facilities.

m. The licensee states its unequivocal intent not to submit an application for a new license for Project No. 477, and instead to cause the project to be decommissioned and removed as expeditiously as possible. If the licensee files an application to surrender the current project license and remove the project works, and if the Commission grants such application, there will be no relicense proceeding. Any surrender application filed by the licensee will be the subject of public notice and opportunity for hearing. If the licensee does not, by two years prior to the expiration of the current license, file an application to surrender the current license, the Commission will apply the relicense competition procedures set forth in its regulations at 18 CFR 16.25 (1999).

n. A copy of the notice of intent is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The notice may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

David P. Boergers,

Secretary.

[FR Doc. 00–5550 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

March 2, 2000.

a. *Type of Filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2181.

c. *Date Filed:* January 27, 2000.

d. *Submitted By:* Northern States Power Company—current licensee.

e. *Name of Project:* Menomonie Hydroelectric Project.

f. *Location:* On the Red Cedar River near the City of Menomonie, in Dunn County, Wisconsin.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Lloyd Everhart, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702 (715) 839–2692.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. *Effective date of current license:* April 1, 1955.

k. *Expiration date of current license:* March 31, 2005.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 642-foot-long dam comprised of a gated spillway section; (2) a 1,400-acre reservoir at a normal pool elevation of 814 feet msl; (3) a powerhouse containing two generating units with a total installed capacity of 5,400 kW, (4) a short 4.16-kV transmission line; and (5) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 31, 2003.

David P. Boergers,

Secretary.

[FR Doc. 00–5551 Filed 3–08–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a Subsequent License

March 2, 2000.

a. *Type of Filing:* Notice of Intent to File an Application for Subsequent License.

b. *Project No.:* 2603.

c. *Date Filed:* January 27, 2000.

d. *Submitted By:* Nantahala Power and Light—current licensee.

e. *Name of Project:* Franklin Hydroelectric Project.

f. *Location:* On the Little Tennessee River, a tributary of the Tennessee River, in Macon County, North Carolina.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* John C. Wishon, Nantahala Power and Light, 301 NP&L Loop, Franklin, NC 28734 (828) 369–4604.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. *Effective date of current license:* May 1, 1965.

k. *Expiration date of current license:* July 31, 2005.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 30-foot-high, 460-foot-long concrete dam comprised of a gated spillway section; (2) a 4.6-mile-long, 210-acre reservoir; (3) a powerhouse containing two generating units with a total installed capacity of 1,040 kW; and (4) other appurtenances.

m. each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2003.

David P. Boergers,

Secretary.

[FR Doc. 00–5552 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a Subsequent License

March 2, 2000.

Type of Filing: Notice of Intent to File an Application for Subsequent Licensee.

b. *Project No.:* 2601.

c. *Date Filed:* January 27, 2000.

d. *Submitted By:* Nantahala Power and Light—current licensee.

e. *Name of Project:* Bryson Hydroelectric Project.

f. *Location:* On the Oconaluftee River, a tributary of the Tuckasegee River, in Swain County, North Carolina.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* John C. Wishon, Nantahala Power and Light, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. *Effective date of current license:* May 1, 1965.

k. *Expiration date of current license:* July 31, 2005.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 35-foot-high, 315-foot-long concrete dam comprised of a gated spillway section; (2) a 1.5-mile-long, 60-acre reservoir; (3) a powerhouse containing two generating units with a total installed capacity of 980 kW; and (4) other appurtenances.

m. Each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2003.

David P. Boergers,

Secretary.

[FR Doc. 00–5553 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing With the Commission and Soliciting Motions To Intervene and Protest

March 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* P–3052–003.

c. *Date Filed* August 27, 1999.

d. *Applicant:* City of Black River Falls, Wisconsin.

e. *Name of Project:* Black River Falls Hydroelectric Project.

f. *Location:* On the Black River in Jackson County, Wisconsin. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§791(a)–825(r).

h. *Applicant Contact:* Loren Radcliffe, Administrator, Black River Falls Municipal Utilities, 119 North Water Street, Black River Falls, Wisconsin 54615.

i. *FERC Contact:* Susan B. O'Brien, *susan.obrien@ferc.fed.us.* (202) 219–2840.

j. *Deadline for filing motions to intervene or protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency .

k. *Status of environmental analysis:* This application has been accepted, but is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of the Project:* The existing run-of-river project consists of: (1) 103–foot-long concrete gravity nonoverflow dam with the crest elevation of 773.0 feet; (2) 221-foot-long Taintor gate spillway; (3) 83-foot-long flashboard spillway with 12-inch-high flashboards; (4) nonoverflow concrete wall forming the left side of the powerhouse forebay; (5) headworks consisting of six head gates, a forebay, and the powerhouse intake; (6) powerhouse with a total installed capacity of 920 kilowatts, producing about 4.4 gigawatthours annually; (7) nonoverflow concrete gravity section extending from the headworks to the west retaining wall; (8) concrete retaining wall; (9) 198-acre reservoir with a total storage capacity of 1,980 acre-feet; (10) transmission lines; and (11) other appurtenances.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/ (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Protests or Motions to Intervene—Anyone may submit a protest or a

motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers.

Secretary.

[FR Doc. 00–5554 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File an Application for a Subsequent License

March 3, 2000.

a. Type of Filing: Notice of Intent to File an Application for Subsequent License

b. Project No.: 2602

c. Date Filed: January 19, 2000

d. Submitted By: Nantahala Power and Light—current licensee

e. Name of Project: Dillsboro Hydroelectric Project

f. Location: On the Tuckasegee River, a tributary of the Little Tennessee River, in Jackson County, North Carolina.

g. Filed Pursuant to: Section 15 of the Federal Power Act

h. Licensee Contact: John C. Wishon, Nantahala Power and Light, 301 NP&L Loop, Franklin, NC 28734 (828) 369–4604.

i. FERC Contact: Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. Effective date of current license: May 1, 1965

k. Expiration date of current license: July 31, 2005

l. Description of the Project: The project consists of the following existing facilities: (1) A 12-foot-high, 330-foot-long concrete dam comprised of a gated spillway section; (2) a 0.8-mile-long reservoir; (3) a powerhouse containing two generating units with a total installed capacity of 225 kW; and (4) other appurtenances.

m. Each application for subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2003.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5686 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

March 3, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Transfer of License

b. Project No: 2816–007

c. Date Filed: February 17, 2000

d. Applicants: Vermont Electric Generation & Transmission Cooperative, Inc., Mr. Gleb Glinka, Trustee, and North Hartland, L.L.C.

e. Name and Location of Project: The North Hartland Hydroelectric Project is located at the U.S. Army Corps of Engineers' North Hartland Dam on the Ottauquechee River in Windsor County, Vermont. The project does not occupy additional Federal or Tribal land.

f. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

g. Applicant Contacts: For Transferee: Mr. Robert L. Carey, North Hartland, L.L.C., 10402 Artemel LN, Suite 203, Great Falls, VA 22066, (703) 757–5903 and Mr. Clive R. G. O'Grady, McGuire Woods Battle & Booth LLP, 1050 Connecticut Ave. NW, Suite 1200, Washington, DC 20006, (703) 712–3057. For Transferor: Mr. Gleb Glinka, Trustee, C/O Mr. Larry A. Belluzzo, U.S. Department of Agriculture, Rural Utilities Service, 14th and Independence Ave., SW, Room 4031–S, Stop 1516, Washington, DC 20250, (202) 720–1265.

h. FERC Contact: Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

i. Deadline for filing comments and or motions: April 3, 2000

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the project number (P–2816–007) on any comments or motions filed.

j. Description of Proposal: The applicants propose a transfer of the license for Project No. 2816 from Vermont Electric Generation & Transmission Cooperative, Inc., the current licensee, by and through Mr. Gleb Glinka, Trustee in Bankruptcy, to North Hartland, L.L.C. Transfer is being sought in connection with the settlement of a Chapter 7 bankruptcy proceeding initiated by the current licensee.

k. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available

for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5688 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM99–2–000 et al.]

Regional Transmission Organizations et al.; Notice of Meeting

In the matter of ER97–1523–000, OA97–470–000, ER97–4234–000; EC00–26–000, EC00–49–000, EC00–40–000, EC00–41–000, ECO00–38–000, El00–26–000, ER00–803–000, EC00–1–000, EL00–42–000, ER00–1572–000, ER00–395–000, ER00–1516–000, ER00–941–000, ER00–1630–000, ER00–1533–000, ER00–1389–000, ER99–2335–000, EL00–36–000, ER00–1483–000, OA96–194–000, OA96–138–000, ER97–2353–000, ER97–913–000, OA97–237–000, ER97–1079–000, ER97–3574–000, ER98–1568–000, ER98–1569–000, ER98–4570–000, ER98–1608–000, ER98–1609–000, ER98–1621–000, ER98–2011–000, ER97–3189–000, ER97–3463–000, ER98–1581–000, ER97–3189–000, OA97–261–000, ER97–1082–000, ER97–3189–000, EC97–38–000, ER97–3273–000, EL97–44–000, OA97–678–000, ER96–2668–000, EC96–29–000, ER99–550–000, ER00–556–000, ER00–298–000, EL00–41–000]; New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool, Commonwealth Edison Company, and PECO Energy Company, Consolidated Edison Inc. and Northeast Utilities, Delmarva Power & Light Company, Atlantic City Electric Company, DPL REIT, Inc. and Conectiv Atlantic Generation, LLC, Commonwealth Edison Company, PECO Energy Company, PECO Energy Power Company, Susquehanna Power Company, Energy East Corporation and CMP Group, Inc., PJM Interconnection, L.L.C., USGen New England, Inc., ISO New England Inc., PJM Interconnection, L.L.C., PJM Interconnection, L.L.C., PJM Interconnection, L.L.C., New York Independent System Operator, Inc., New England Power Pool, New England Power Pool, Atlantic City Electric Company, Camden Cogen, L.P., Delmarva Power & Light Company, Edison Mission Marketing & Trading Inc., Electric Power Supply Association, FPL Energy, Inc., New Energy, Inc., Old Dominion Electric Cooperative, PECO Energy Company, PG&E Energy Company, PG&E Energy Trading-Power L.P., Sithe Power Marketing, L.P., Strategic Energy, L.L.C., Virginia Electric and Power Company, Williams Energy Marketing and Trading Company, WPS Energy Services, Inc. v. PJM Interconnection, L.L.C., New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corporation, Niagara Mohawk Power Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & gas Corporation, Connecticut Yankee Atomic Power Company, New England Power Pool, Potomac Electric Power Company, Pennsylvania-New Jersey-Maryland Interconnection, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, PP&L, Inc., Potomac Electric Power Company, Public Service Electric and Gas Company, PJM Interconnection, L.L.C., Pennsylvania-New Jersey-Maryland Interconnection, Atlantic City Electric Company; Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, Pennsylvania-New Jersey-Maryland Interconnection Restructuring, Pennsylvania-New Jersey-Maryland Interconnection Restructuring, PJM Interconnection, L.L.C., Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, PECO Energy Company, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corporation, PJM Interconnection, L.L.C.

On December 20, 1999, the Commission issued Order No. 2000 to advance the formation of Regional Transmission Organizations (RTOs). Order No. 2000 announced the initiation of a regional collaborative process to aid in the formation of RTOs. To initiate the collaborative process, the Commission organized a series of regional workshops. These workshops are open to all interested parties. The second workshop is scheduled for March 15–16, 2000 in Philadelphia, Pennsylvania. During the course of the Philadelphia workshop, discussion of the above-listed cases could arise. Any person having an interest in an above-listed case is invited to attend the Philadelphia workshop. There will be no Commission transcript of any of the workshops, and information discussed or disseminated in the workshop will

not constitute part of the decisional record in the above-listed cases, unless formally filed in accordance with Commission regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–5763 Filed 3–8–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6549–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP subpart II: Shipbuilding and Ship Repair (Surface Coating), OMB Control #2060–0330 and EPA ICR number 1712.03, expiration date May 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 10, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No.1712.03. For technical questions about the ICR call Anthony Raia (202) 564–6045.

SUPPLEMENTARY INFORMATION:

Title: NESHAP subpart II: Shipbuilding and Ship Repair (Surface Coating), OMB Control #2060–0330 and EPA ICR number 1712.03, expiration date May 31, 2000. This is a request for extension of a currently approved collection.

Abstract: The respondents are owners or operators of Shipbuilding and Ship Repair Facilities. Operations covered include: primer and top coat application in manufacturing processes and in ship repair processes. The NESHAP regulation 40 CFR part 63, subpart II, was promulgated on December 15, 1995. The Administrator has determined that Hazardous Air Pollutant (HAP) and Volatile Organic Compound (VOC) emissions from Shipbuilding and Ship Repair Facilities cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. In order to ensure compliance with the standards promulgated to protect public health, adequate recordkeeping and reporting is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

These standards rely on the reduction of HAP emissions by using coatings which comply with the volatile organic compound (VOC) limits set forth in this MACT standard. In some cases, the control of emissions of HAP from surface coating at shipbuilding and repair facilities also requires the installation of properly designed equipment, and the operation and maintenance of that equipment. The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the standard is being met. The implementation plans from facilities are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. In addition, the semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. Recordkeeping and reporting are mandatory under this regulation. Records must be maintained for 5 years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published in the **Federal Register** on May 27, 1999; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 492 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Shipbuilding and Ship Repair Facilities.

Estimated Number of Respondents: 45.

Frequency of Response: Initial, Semiannual.

Estimated Total Annual Hour Burden: 22,149.

Estimated Total Annualized Capital, O&M Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1712.03 and OMB Control No. 2060–0330 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania, Ave., NW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: March 1, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–5800 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6549–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Valuing Inland Water Quality Improvements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following proposed Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Valuing Inland Water Quality Improvements (EPA ICR number 1914.01). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 10, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1914.01. For technical questions about the ICR contact Dr. Alan Carlin, Office of Policy and Reinvention, Mail Code 2172, U.S. Environmental Protection Agency, Washington, DC 20460, e-mail carlin.alan@epa.gov, phone 202–260–5499, FAX 202–260–7875.

SUPPLEMENTARY INFORMATION:

Title: Valuing Inland Water Quality Improvements (EPA ICR number 1914.01). This is a new collection.

Abstract: The purpose of this project is to develop economic benefit values for water quality improvements for lakes, rivers, and streams. These estimates are of substantial academic interest since past studies have been based on a water quality ladder, which is believed not to be as scientifically valid a construct for assessing water quality. The estimates may also be useful to the Agency in complying with the requirements of Executive Order 12866 requiring cost-benefit analysis of major Federal regulations. This project will explore how valuations are affected by use of the current EPA approach of specifying different dimensions of water quality such as swimming, fishing, and broader aquatic ecological effects. The findings will be pertinent to economists studying water quality changes, particularly with respect to the task of assessing benefit values for water quality policies. We expect to use data collected with the survey in determining the value of water quality improvements to households in the United States. We plan to recruit subjects randomly across the United States through telephone recruiting. Subjects will be asked to complete a computer survey from a disk, which will be mailed to them. Subjects without convenient access to a personal computer will be referred to a national commercial facility with computer access nearest their home for the purpose of completing the survey. Subjects will return the survey disk by mail when completed. Participation in the survey is voluntary. Respondents will have to expend time, effort, and in many cases travel expense to participate in the study. Avoiding bias in the sample towards individuals and groups who can more easily take the survey is an important concern. As a result, we will compensate subjects for their time (and travel if necessary) to avoid the selection bias that might otherwise result. This survey is innovative both in terms of the survey methodology and the substantive economic focus. On both of these dimensions the survey is breaking new ground. To maximize the research value of the survey, we will proceed iteratively. The version of the survey available now will undergo at least two pre-tests after OMB approves the ICR. These pretests will be designed to identify programming complications arising from the nature of the survey, as well as survey questions that can be refined to promote greater clarity and convergence in the iterative choice process used. The final structure of the survey will depend on how people respond to the draft questions. For example, on any initial pairwise choice question, the researchers seek to present an initial tradeoff where half of the subjects choose each alternative, in order to maximize convergence on tradeoff rates in the least possible number of iterative questions. After the pre-tests are completed, recruiting will proceed as described above.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d) soliciting comments on this collection of information was published on November 12, 1999 (64 FR 61632); two comments were received.

Burden Statement: The annual public reporting burden for this collection of information will average between 50 minutes and 110 minutes per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Individuals/households.

Estimated Number of Respondents: 2,800.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 3,150 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1914.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 1, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–5801 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6549–9]

Transfer of Confidential Business Information to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: EPA will transfer to its contractor, Dynamac Corporation and its subcontractor: Science Applications International Corporation (SAIC) Confidential Business Information (CBI) that has been or will be submitted to EPA under section 3007 of the Resource

Conservation and Recovery Act (RCRA). Under RCRA, EPA is involved in activities to support, expand and implement solid and hazardous waste regulations.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than March 20, 2000.

ADDRESSES: Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Comments should be identified as ''Transfer of Confidential Data.''

FOR FURTHER INFORMATION CONTACT: Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, 703–308–7909.

SUPPLEMENTARY INFORMATION:

1. Transfer of Confidential Business Information

Under EPA Contract 68–W–98–231 Dynamac Corporation, and its subcontractor, will assist the Office of Solid Waste, Hazardous Waste Identification Division, by providing technical support in completing hazardous waste listing determinations, defining hazardous waste characteristics, developing the hazardous waste identification rule, and developing rules and reports pertaining to the definition of solid waste, medical waste, used oil, waste generation and transportation, and universal waste, such as batteries and fluorescent light bulbs. EPA has determined that Dynamac Corporation and its subcontractor, will need access to RCRA CBI submitted to the Office of Solid Waste to complete this work. Dynamac Corporation and its subcontractor, needs access to several EPA sources including the Petroleum Refinery Data Base, the Toxics Release Inventory, the EPA National Survey of Hazardous Waste Generators, and the Industries Studies Data Base.

In accordance with 40 CFR 2.305(h), EPA has determined that Dynamac Corporation, and its subcontractor, require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is submitting this notice to inform all submitters of CBI of EPA's intent to transfer CBI to this firm on a need-to-know basis. Upon completing its review of materials submitted, Dynamac Corporation, and its subcontractor, will return all CBI to EPA.

EPA will authorize Dynamac Corporation, and its subcontractor, for access to CBI under the conditions and terms in EPA's ''Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual.'' Prior to transferring CBI to Dynamac Corporation, and its subcontractor, EPA will review and approve its security plans and Dynamac Corporation, and its subcontractor, will sign non-disclosure agreements.

Dated: February 18, 2000.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–5802 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6549–1]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the USEPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1. Air Toxics Monitoring Subcommittee

The Air Toxics Monitoring Subcommittee, an ad hoc subcommittee of the Science Advisory Board's Executive Committee, will meet March 29–30, 2000 in conference room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The meeting will begin by 9:00 a.m. on Wednesday, March 29 and adjourn no later than 5:00 p.m. on Thursday, March 30.

Purpose of the Meeting—The Subcommittee will review the draft Air Toxics Monitoring Strategy Concept Paper and the draft ''Protocol for Model to Monitor Comparisons for National Air Toxics Screening Assessment''. The Air Toxics Monitoring Concept Paper outlines the approach proposed by the Environmental Protection Agency (EPA) and its State and Local Agency partners to develop a national ambient monitoring network for hazardous air pollutants (HAPs). The concept paper describes monitoring and data assessment activities to be performed over the next several years which will facilitate the design of a long-term monitoring program.

The role of this evolving monitoring network is, initially, to provide data on a subset of HAPs to characterize ambient concentrations in representative monitoring areas to support and evaluate dispersion and exposure models. The ''Protocol for Model to Monitor Comparisons for National Air Toxics Screening Assessment'' provides a proposed collection of data analysis procedures which utilize ambient air monitoring data to evaluate air quality model estimates. Later, the network can be used to establish ambient trends, and evaluate the effectiveness of HAP control strategies. Eventually, the network will support other efforts such as initiatives to focus on multi-media and cumulative risks, various air toxics assessments, and education/outreach.

Charge to the Subcommittee—The preliminary charge questions for this review are:

(a) Since the air toxics monitoring program will be an integral part of the National Air Toxics Assessment activities and will augment the pre-existing State and local toxics monitoring efforts, does the Subcommittee believe that the near-term (1–2 year) focuses (characterizing neighborhood scale HAPs concentrations and providing a reality check on dispersion modeling elements of the strategy) are appropriate initial steps.

(b) Is a basic 24-hour sample, taken at a frequency sufficient to fulfill the objectives of the program, adequate to provide this model reality check and supply data for the characterization of ambient HAPs concentrations?

(c) Is the neighborhood sampling scale an appropriate choice for this program?

(d) Given the enormity of the task of monitoring for all HAPs, we propose to concentrate on monitoring for the 33 HAPs identified in the Urban Air Toxics Strategy (64 FR 38705). We anticipate monitoring for all (approximately 30) HAPs with practical measurement methods at some sites in the proposed network, and monitor for a smaller subset at the majority of new sites. We would appreciate the advice of the Subcommittee regarding the soundness of this strategy.

(e) Are the available Toxic Organic (TO-) methods suitable for the operation of a routine monitoring network

operated by the State and local air pollution control agencies?

(f) EPA expects to support the establishment of moveable monitoring platforms to better assess the multiple program objectives and characterize areas which are disproportionately impacted by HAPs. We would appreciate the Subcommittees thoughts on how best to make use of these data.

(g) In addition to your comments on the overall strategy, we seek your advice regarding the utility of these data analysis approaches to evaluate dispersion model estimates and with the appropriateness of this collection of monitoring methods as a logical starting point to measure a list of urban HAPs.

Availability of Review Materials: The review documents are the revised draft Air Toxics Monitoring Strategy Concept Paper and the draft ''Protocol for Model to Monitor Comparisons for National Air Toxics Screening Assessment''. Electronic versions of both documents will be available after March 1 at: *http://www.epa.gov/ttn/amtic/.* A limited number of paper copies of these documents can be obtained from Neil Frank, (919) 541–5560, *frank.neil@epa.gov.*

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments must contact Ms. Kathleen White Conway, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at *conway.katheen@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. Conway no later than noon Eastern Time on March 22nd.

2. Natural Attenuation Research Subcommittee—Teleconference Meetings on March 30 and May 1

The Natural Attenuation Research Subcommittee of the Science Advisory Board's (SAB) Environmental Engineering Committee (EEC) will conduct public teleconference meetings Thursday, March 30, 2000 and Monday, May 1, 2000 between the hours of 3:00 p.m.—5:00 p.m (Eastern Standard Time). The meetings will be coordinated through a conference call connection in Room 6450V in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The Ariel Rios Building is adjacent to the escalator to the Federal Triangle Metro Station on 12th Street NW. The public is encouraged to attend the meeting in the conference room noted above, however, the public may also attend through a telephonic link if lines are available. Additional instructions about how to participate in either conference call can be obtained by calling Ms. Mary Winston approximately a week prior to each meeting (by March 16 or April 24, respectively) at (202) 564–4538, or via e-mail at *winston.mary@epa.gov.*

Purpose of the Meetings—At the March 30th conference call meeting, the Subcommittee will present and discuss a draft outline for its report on the review of EPA's natural attenuation research. At the May 1st conference call meeting, the Subcommittee members will present their preliminary reactions to the review materials and to clarify the agenda for a face-to-face review meeting to be scheduled at a later date.

Availability of Review Materials: The review materials include background information such as the Directive on Natural Attenuation (*http://www.epa.gov/swerust1/directiv/d9200417.pdf*); the Waste Research Strategy (*http://www.epa.gov/ORD/WebPubs/final/wastepub.pdf*); a list of publications based on the completed research; project descriptions for on-going research; and a description of planned research not yet underway. Where an electronic version of a document is available, the website has been noted. A limited number of paper copies of these documents can be obtained from Dr. Stephen Schmelling at e-mail: *schmelling.steve@epa.gov* or via phone at (580) 436–8540.

For Further Information—Any member of the public wishing further information concerning these two conference call meetings or wishing to submit brief oral comments for any of the meetings must contact Ms. Kathleen White Conway, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at *conway.katheen@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. Conway no later than noon Eastern Time one week prior to each meeting (by March 16 or April 24, respectively).

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting. The SAB will accept written comments until the date of the meeting, unless otherwise stated.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Meeting Access—Individuals requiring special accommodation at this teleconference meeting, including wheelchair access to the conference room, should contact Ms. Conway at least five business days prior to the meetings so that appropriate arrangements can be made.

Dated: March 2, 2000.

John R. Fowle III,

Acting Staff Director, Science Advisory Board.

[FR Doc. 00–5622 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6549–4]

Extension of Time to Comment on the Interim Guidance on the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing an extension of time to comment on the Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions.

DATES: Comments are due by April 10, 2000.

ADDRESSES: Send comments to EPA, CERCLA Federally Permitted Release

Definition, Docket Number EC–G–1999–029, Mail Code 2201–A, and mail to: 1200 Pennsylvania Avenue, NW, Washington, DC 20460; or fax to: (202) 501–1011; or email to: docket.oeca@epa.gov. Commentors who want EPA to acknowledge receipt of their comments must mail a self-addressed, stamped envelope.

FOR FURTHER INFORMATION CONTACT: For further information regarding the extension of time, please contact Beth Burchard, Environmental Protection Agency (Mail Code 2245A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; (202) 564–4177.

SUPPLEMENTARY INFORMATION:

Purpose of this Document

The Environmental Protection Agency announces an extension of time to submit comments on the Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions from March 10, 2000 to April 10, 2000. The guidance discusses EPA's interpretation of the federally permitted release exemption as it applies to certain air emissions, responds to industry questions, and solicits public comment on the issues discussed in the interim guidance. The interim guidance was published in the **Federal Register** at 64 FR 71614 (Dec. 21, 1999).

Eric Schaeffer,

Director, Office of Regulatory Enforcement.

[FR Doc. 00–5798 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6547–5]

Proposed De Minimis Settlement Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act Regarding the Syosset Landfill Superfund Site, Town of Oyster Bay, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative *de minimis* settlement and opportunity for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (''EPA''), Region II, announces a proposed administrative *de minimis* settlement pursuant to section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Syosset Landfill Superfund Site (''Site''), located in the Town of Oyster Bay, New York. This document is being published pursuant to section 122(i) of CERCLA to inform the public of the proposed settlement and give the public the opportunity to comment.

The proposed settlement, between EPA and Kollmorgen Corporation, Photocircuits Corporation, Konica Graphics Imaging, Inc., and Phelps Dodge Corporation (''Respondents'') has been memorialized in an Administrative Order on Consent (Index Number CERCLA–02–99–2025) (''Order''). The Order will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate the Order is inappropriate, improper, or inadequate, and EPA, in accordance with section 122(i)(3) of CERCLA, modifies or withdraws its consent to the Order.

Under the settlement, the Respondents will be obligated to make payments totalling $7,952.76 to the Hazardous Substance Superfund in reimbursement of EPA response costs relating to the Site. In addition, the Order requires one of the Respondents, Phelps Dodge Corp., to pay $17,595.02 to the Town of Oyster Bay, as a contribution toward response costs incurred by the Town with respect to the Site. The settlement amounts established by the Order are based on information indicating that each company contributed minimal volumes of hazardous substances to the Site. In exchange for their payments, Respondents will receive a covenant not to sue from EPA relating to liability for the Site under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

DATES: Comments must be provided on or before April 10, 2000.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007–1866, and should refer to: ''Syosset Landfill Superfund Site, U.S. EPA Index No. CERCLA–02–99–2025.'' For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leilani Davis, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007, Telephone: (212) 637–3249.

Dated: February 24, 2000.

William J. Muszynski,

Acting Regional Administrator, Region II.

[FR Doc. 00–5799 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 2, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 8, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–xxxx.

Title: Medical Implant Communications Service (MICS)—95.1215 Disclosure policies and 95.1217 Labeling requirements.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 20.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 20 hours.

Total Annual Cost: No annual cost burden on respondents from either capital or start-up costs.

Needs and Uses: The information collection contained in sections 95.1215 and 95.1217 require manufacturers of transmitters for the MICS to include with each transmitting device a statement regarding harmful interference and to label the device in a conspicuous location on the device. The requirements will allow use of potential life-saving medical technology without causing interference to other users of the 402–405 MHz band.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5546 Filed 3–8–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, March 14, 2000, 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, March 16, 2000, at 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

President William J. Clinton and the Clinton/Gore '96 Primary Committee, Inc.—Repayment Determination and Disgorgement Determination.

Revision to the Statement of Reasons concerning the 1996 Democratic National Convention Committee, Inc. (LRA#471).

Revision to the Statement of Reasons concerning the 1996 Republican National Convention Committee on Arrangements (LRA #472).

Statement of Reasons—Buchanan for President Committee, Inc.

Advisory Opinion 2000–02: Rick Hubbard and Rick Hubbard for U.S. Senate.

Advisory Opinion 2000–04: National Association of Federal Credit Unions by counsel, Thomas J. Cooper and John F. Cooney.

Final Rules and Accompanying Explanation and Justification to Revise 11 CFR Part 108, Filing Copies of Reports and Statements with State Officers.

Notice of Disposition on Repayments by Federally Financed Presidential Primary Campaign Committees (11 CFR § 9038.2(b)(2).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–5967 Filed 3–7–00; 3:29 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 23, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Matthew N. Smith II 1997 Family Trust, Escanaba, Michigan; to acquire voting shares of Northern Michigan Corporation, Escanaba, Michigan, and thereby indirectly acquire voting shares of Northern Michigan Bank, Escanaba, Michigan.

Board of Governors of the Federal Reserve System, March 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5677 Filed 3–8–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 2000.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. Andover Bancorp, Inc., Andover, Massachusetts; to acquire 100 percent of the voting shares of GBT Bancorp, Gloucester, Massachusetts, and thereby indirectly acquire voting shares of

Gloucester Bank & Trust Company, Gloucester, Massachusetts.

In connection with this application, Applicant also has applied to acquire Gloucester Investment Corp., Gloucester, Massachusetts, and thereby engage in making loans to small businesses and investments in industrial and commercial enterprises in the City of Gloucester and the area known as Cape Ann, pursuant to § 225.28(b)(12) of Regulation Y.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. RSB Financial, Inc., Reading, Kansas; to become a bank holding company by acquiring 80.2 percent of the voting shares of Reading State Bank, Reading, Kansas.

Board of Governors of the Federal Reserve System, March 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5675 Filed 3–8–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 2000.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. Brookline Bancorp, MHC, and Brookline Bancorp, Inc., both of Brookline, Massachusetts; to acquire 100 percent of the voting shares of Lighthouse Bank, Waltham, Massachusetts.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. BB&T Corporation, Winston-Salem, North Carolina; to merge with One Valley Bancorp, Inc., Charleston, West Virginia, and thereby indirectly acquire One Valley Bank, National Association, Charleston, West Virginia; One Valley Bank, Inc., Morgantown, West Virginia; One Valley Bank of Huntington, Inc., Huntington, West Virginia; One Valley Bank of Mercer County, Inc., Princeton, West Virginia; One Valley Bank " South, Inc., Summersville, West Virginia; One Valley Bank " North, Inc., Moundsville, West Virginia; One Valley Bank Central Virginia, National Association, Lynchburg, Virginia; One Valley Bank East, National Association, Martinsburg, West Virginia; and One Valley Bank—Shenandoah, Raphine, Virginia.

In connection with this application, Applicant also has applied to exercise an option to acquire up to 19.9 percent of the voting securities of One Valley Bancorp, Inc., under certain circumstances.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. BGC Bancorp, Inc., Gibson City, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Gibson City, Gibson City, Illinois.

Board of Governors of the Federal Reserve System, March 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5816 Filed 3–9–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Fortress Bancshares, Inc., Westby, Wisconsin; to acquire Fortress Bank of Cresco, Cresco, Iowa, upon its conversion to a federal savings bank, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, March 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5676 Filed 3–8–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

State Median Income Estimates for Four-Person Families (FY 2001); Notice of the Fiscal Year (FY) 2001 State Median Income Estimates for Use Under the Low Income Home Energy Assistance Program (LIHEAP) Administered by the Administration for Children and Families, Office of Community Services, Division of Energy Assistance

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of estimated State median income for FY 2001.

SUMMARY: This notice announces the estimated median income for four-person families in each State and the District of Columbia for FY 2001 (October 1, 2000 to September 30, 2001). LIHEAP grantees may adopt the State median income estimates beginning with the date of this publication of the estimates in the **Federal Register** or at a later date as discussed below. This means that LIHEAP grantees could choose to implement this notice during the period between the heating and cooling seasons. However, by October 1, 2000, or by the beginning of a grantee's fiscal year, whichever is later, LIHEAP grantees using State median income estimates must adjust their income eligibility criteria to be in accord with the FY 2001 State median income estimates.

This listing of estimated State median incomes concerns maximum income levels for households to which LIHEAP grantees may make payments under LIHEAP.

EFFECTIVE DATE: The estimates are effective at any time between the date of this publication and October 1, 2000, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

FOR FURTHER INFORMATION CONTACT: Leon Litow, Administration for Children and Families, HHS, Office of Community Services, Division of Energy Assistance 5th Floor West 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Telephone: (202) 401–5304, Internet E-Mail: llitow@acf.dhhs.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, as amended), we are announcing the estimated median income of a four-person family for each state, the District of Columbia, and the United States for FY 2001 (the period of October 1, 2000, through September 30, 2001).

Section 2605(b)(2)(B)(ii) of the LIHEAP statute provides that 60 percent of the median income for each state, as annually established by the Secretary of the Department of Health and Human Services, is one of the income criteria that LIHEAP grantees may use in determining a household's eligibility for LIHEAP.

LIHEAP is currently authorized through the end of FY 2004 by the Coats Human Services Reauthorization Act of 1998, Pub. L. 105–285, which was enacted on October 27, 1998.

Estimates of the median income of four-person families for each State and the District of Columbia for FY 2001 have been developed by the Bureau of the Census of the U.S. Department of Commerce, using the most recently available income data. In developing the median income estimates for FY 2001, the Bureau of the Census used the following three sources of data: (1) the March 1999 Current Population Survey; (2) the 1990 Decennial Census of Population; and (3) 1998 per capita personal income estimates, by state, from the Bureau of Economic Analysis of the U.S. Department of Commerce.

Like the estimates for FY 2000, the FY 2001 estimates include income estimates from the March Current Population Survey that are based on population controls from the 1990 Decennial Census of Population. Income estimates prior to FY 1996 from the March Current Population Survey had been based on population controls from the 1980 Decennial Census of Population. Generally, the use of 1990 population controls results in somewhat lower estimates of income.

For further information on the estimating method and data sources, contact the Housing and Household Economic Statistics Division, at the Bureau of the Census (301-457–3243).

A state-by-state listing of median income, and 60 percent of median income, for a four-person family for FY 2001 follows. The listing describes the method for adjusting median income for families of different sizes as specified in regulations applicable to LIHEAP, at 45 CFR 96.85(b), which was published in the **Federal Register** on March 3, 1988 at 53 FR 6824.

Dated: March 2, 2000.

Donald Sykes,

Director, Office of Community Services.

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE, FISCAL YEAR 2001 [1]

States	Estimated state median income 4-person families [2]	60 percent of estimated state median income 4-person families
Alabama	$51,156	$30,694
Alaska	59,726	35,836
Arizona	49,397	29,638
Arkansas	44,471	26,683
California	55,209	33,125
Colorado	63,428	38,057
Connecticut	75,534	45,320
Delaware	65,157	39,094
District of Col.	60,674	36,404
Florida	52,581	31,549
Georgia	55,989	33,593
Hawaii	61,838	37,103
Idaho	49,174	29,504
Illinois	61,672	37,003
Indiana	55,284	33,170
Iowa	53,230	31,938
Kansas	55,341	33,205
Kentucky	49,108	29,465
Louisiana	49,037	29,422
Maine	51,059	30,635
Maryland	71,404	42,842
Massachusetts	68,958	41,375
Michigan	59,019	35,411
Minnesota	67,140	40,284
Mississippi	43,907	26,344
Missouri	54,190	32,514
Montana	44,737	26,842
Nebraska	56,692	34,015
Nevada	53,054	31,832
New Hampshire	61,014	36,608
New Jersey	70,983	42,590
New Mexico	43,829	26,297
New York	57,142	34,285
North Carolina	54,331	32,599
North Dakota	51,002	30,601
Ohio	60,169	36,101
Oklahoma	47,436	28,462
Oregon	55,892	33,535
Pennsylvania	58,507	35,104
Rhode Island	62,339	37,403
South Carolina	52,111	31,267
South Dakota	49,702	29,821
Tennessee	50,310	30,186
Texas	51,148	30,689
Utah	54,946	32,968
Vermont	53,691	32,215
Virginia	60,860	36,516
Washington	61,059	36,635
West Virginia	43,239	25,943
Wisconsin	57,890	34,734

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE, FISCAL YEAR 2001 [1]—Continued

States	Estimated state median income 4-person families [2]	60 percent of estimated state median income 4-person families
Wyoming	50,989	30,593

[1] In accordance with 45 CFR 96.85, each State's estimated median income for a 4-person family is multiplied by the following percentages to adjust for family size: 52% for one person, 68% for two persons, 84% for three persons, 100% for four persons, 116% for five persons, and 132% for six persons. For family sizes greater than six persons, add 3% for each additional family member and multiply the new percentage by the State's estimated median income for a 4-person family.

[2] Prepared by the Bureau of the Census from the March 1999 Current Population Survey, 1990 Decennial Census of Population and Housing, and 1998 per capita personal income estimates, by state, from the Bureau of Economic Analysis.

Note—FY 2001 covers the period of October 1, 2000 through September 30, 2001. The estimated median income for 4-person families living in the United States is $56,061 for FY 2001. The estimates are effective for the Low Income Home Energy Assistance Program (LIHEAP) at any time between the date of this publication and October 1, 2000, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

[FR Doc. 00–5679 Filed 3–8–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0835]

Draft Guidance for Industry on Conjugated Estrogens, USP: LC–MS Method for Both Qualitative Chemical Characterization and Documentation of Qualitative Pharmaceutical Equivalence; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Conjugated Estrogens, USP: LC–MS Method for Both Qualitative Chemical Characterization and Documentation of Qualitative Pharmaceutical Equivalence.'' This draft guidance is intended to provide recommendations to applicants who wish to submit a new drug application or abbreviated new drug application for a natural source conjugated estrogens solid oral dosage form. This guidance provides a description of the liquid chromatography-mass spectrometry (LC–MS) method that can be used to address both qualitative chemical characterization and qualitative pharmaceutical equivalence (PE).

DATES: Submit written comments on the draft guidance by June 8, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Wallace P. Adams, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5651.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Conjugated Estrogens, USP: LC–MS Method for Both Qualitative Chemical Characterization and Documentation of Qualitative Pharmaceutical Equivalence.'' Chemical characterization and PE of natural source conjugated estrogens involve both qualitative and quantitative aspects. Qualitative aspects of both chemical characterization and PE involve detection and measurement of certain of the components in conjugated estrogens. The recommended methodology, LC–MS, is applicable to both the drug substance and/or solid oral dosage forms. This draft guidance provides a description of the LC–MS method developed by the Division of Testing and Applied Analytical Development/Office of Pharmaceutical Science/Center for Drug Evaluation and Research for both the qualitative chemical characterization and documentation of qualitative PE of natural source conjugated estrogens. Interpretation of the data for PE is beyond the scope of this guidance and will be addressed in a separate document. Quantitative aspects of chemical characterization and PE use the gas chromotography (GC) (flame-ionization detector) and high-pressure liquid chromotography (HPLC) (ultraviolet detector) assays described in a draft proposed Conjugated Estrogens, USP, monograph (http://www.fda.gov/cder/drug/monographs/default.htm), and they are not the subject of this guidance.

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on this LC–MS method for both qualitative chemical characterization and documentation of qualitative pharmaceutical equivalence of conjugated estrogens, USP. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 1, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–5751 Filed 3–6–00; 2:58 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–205/Supplement]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send

comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Individual Market-Guarantee Issue Election Packet, and Supporting Regulations in 45 CFR 148, and Forms/Instructions; *Form No.:* HCFA–R–205/Supplement (OMB #0938–NEW); *Use:* This collection is a Supplement of the existing collection for ''Information Collection Requirements Referenced in HIPAA for the Individual Market, Supporting Regulations in 45 CFR 148, and forms/instructions (OMB 0938–0703). This supplement is intended to simplify the filing obligations of issuers who participate in the individual market of more than one direct enforcement state. A direct enforcement state is a state in which HCFA has the responsibility to enforce the requirements of HIPAA. This supplement allows the issuer to submit the requested information for multiple states at one time, rather than having to complete a separate transmittal form for each state; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Individuals or Households, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 15; *Total Annual Responses:* 150; *Total Annual Hours:* 566.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Dated: February 29, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5703 Filed 3–8–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1514]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Program;

Form No.: HCFA–1514 (OMB# 0938–0380); *Use:* Section 1861 of the Social Security Act requires hospitals and critical access hospitals to be certified to participate in the Medicare/Medicaid program. These providers must complete the ''Hospital Request for Certification in the Medicare/Medicaid Program'' form in order to be certified or recertified; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 6,300; *Total Annual Responses:* 4,400; *Total Annual Hours:* 1,100.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Dated: February 28, 2000.

John P. Burke III,

Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5704 Filed 3–8–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0368 and HCFA–R–0144]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to

be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicaid Drug Rebate; *Form No.:* 0938–0582; *Use:* Section 1927 requires State Medicaid agencies to report to drug manufacturers and HCFA on the drug utilization for their State and the amount of rebate to be paid by the manufacturer; *Frequency:* Quarterly; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 51; *Total Annual Responses:* 204; *Total Annual Hours:* 6,125.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Dated: February 28, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5705 Filed 3–8–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0367, 0367a, b, and c]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicaid Drug Rebate Program—Manufacturers; *Form No.:* HCFA–0367 and 0367a, b, and c (0938–0578; *Use:* Section 1927 requires drug manufacturers to enter into and have in effect a rebate agreement with the Federal Government for States to receive funding for drugs dispensed to Medicaid recipients; *Frequency:* Quarterly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 551; *Total Annual Responses:* 2,204; *Total Annual Hours:* 54,660.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Dated: February 28, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5707 Filed 3–8–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0211]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Model Application Template for State Child Health Plan Under Title XXI of the Social Security Act, State Children's Health Insurance Program, and Model Application Template and Instructions; *Form No.:* HCFA–R–211 (OMB #0938–0707); *Use:* States are required to submit Title XXI plans and amendments for approval by the Secretary pursuant to section 2102 of the Social Security Act in order to receive funds for initiating and expanding health insurance coverage for uninsured children. The model application Template is used to assist States in submitting a State Child Health Plan and amendments to that plan; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 37; *Total Annual*

Responses: 37; *Total Annual Hours:* 2,960.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Dated: February 28, 2000.

John P. Burke,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5709 Filed 3–8–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2746]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Death Notification; *Form No.:* HCFA–2746 (0938–0448); *Use:* The form is completed by all Medicare approved ESRD facilities upon the death of an ESRD patient. Its primary purpose is to collect fact and cause of death. Reports of deaths are used to show cause of death and demographic characteristics of these patients. *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions and Federal Government; *Number of Respondents:* 3,761; *Total Annual Responses:* 52,654; *Total Annual Hours Requested:* 8,951.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503

Dated: January 24, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5706 Filed 3–8–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0588]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Authorization agreement for electronic forms transfer; *Form No.:* HCFA–0588 (OMB #0938–0626); *Use:* The information is needed to allow providers to receive funds electronically in their bank accounts; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 1,250.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503

February 28, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5708 Filed 3–8–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0605]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Hospital Provider of Extender Care Services (Swing-Beds) in the Medicare and Medicaid Programs, 42 CFR 447.280 and 482.66; *Form No.:* HCFA–605 (OMB# 0938–0624); *Use:* This is a facility identification and screening form. It will be completed by a hospital that is requesting approval. It initiates the process of determining the hospital's eligibility and also requests approval for its bed count category. *Frequency:* Other (one time); *Affected Public:* Business or other for profit, and Not for profit institutions; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Hours:* 12.5.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer.

OMB Human Resources and Housing Branch, Attention, Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503

Dated: February 24, 2000.

John P. Burke

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–5710 Filed 3–8–00; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request: Pretesting of Office of Cancer Communications Messages

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* Pretesting of Office of Cancer Communications Messages.

Type of Information Collection Request: Extension (OMB #0925–0046, expires (8/31/00).

Need and Use of Information Collection: In order to carry out NCI's legislative mandate to educate and disseminate information about cancer prevention, detection, diagnosis, and treatment to a wide variety of audiences and organizations (*e.g.,* cancer patients, their families, the general public, health providers, the media, voluntary groups, scientific and medical organizations), the Office of Cancer Communications (OCC) needs to pretest its communications strategies, concepts, and messages while they are under development. The primary purpose of this pretesting, or formative evaluation, is to ensure that the messages, communication materials, and information services created by OCC have the greatest capacity of being received, understood, and accepted by their target audiences. By utilizing appropriate qualitative and quantitative methodologies, OCC is able to (1) understand characteristics of the intended target audience—their attitudes, beliefs and behaviors—and use this information in the development of effective communication tools; (2) produce or refine messages that have the greatest potential to influence target audience attitudes and behavior in a positive manner; and (3) expend limited program resource dollars wisely and effectively.

Frequency of Response: On occasion.

Affected Public: Individuals or households; Business or other for profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Type of Respondents: Adult cancer patients; members of the public; health care professionals; organizational representatives. The annual reporting burden is as follows:

Estimated Number of Respondents: 13,780;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours per Response: 1458; and

Estimated Total Annual Burden Hours Requested: 2,010.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ellen Eisner, Communications Research Manager, Health Promotion Branch, OCC, NCI, NIH, Building 31, Room 10A03, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 435–7783 or E-mail your request, including your address to: EisnerE@occ.nci.nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before May 8, 2000.

March 1, 2000.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 00–5786 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Strong Heart Family Study (U01) and Small Grant Program (R03).

Date: April 6, 2000.

Time: 8 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Valerie L. Penger, PhD, Health Science Administrator, NIH, NHLHI, DEA, Review Branch, Rockledge Center II, 6701 Rockledge Drive, Suite 7198, Bethesda, MD 20892–7924, 301–435–0297.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research, 93.837, Heart and Vascular Diseases Research, National Institutes of Health, HHS)

Dated: March 2, 2000.

LaBerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5796 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel To Review Individual National Research Service Award Applications.

Date: March 22, 2000.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary J. Stephens-Frazier, PHD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: March 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5787 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Behavioral Special Emphasis Panel.

Date: March 9, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5788 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, ZNS1 NST 01L.

Date: March 21, 2000.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lillian M. Pubols, PhD, Chief, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, lp28e@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5791 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: April 4, 2000.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Gerald L McLaughlin, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, gm145a@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious diseases Research, National Institutes of Health, HHS)

Dated: March 3, 2000.

LaBerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5792 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 8, 2000.

Time: 10:30 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert H. Stretch, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 16–17, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Robert H. Stretch, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 20, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Terrace Room, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Robert H. Stretch, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 28, 2000.

Time: 10 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.

Contact Person: Robert H. Stretch, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 28, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jean G. Noronha, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 28, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd.,

Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 10–11, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Jean G. Noronha, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9609, Bethesda, MD 20892–9609, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 13, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5793 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, To Review Program Project Application (P01).

Date: March 17, 2000.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: The clarion Hotel—Fifth Avenue, New York, NY 10016.

Contact Person: Arthur Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, To Review Grant Applications.

Date: April 3, 2000.

Time: 10 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Washington Dulles, 1000 Sully Road, Dulles, VA 20166.

Contact Person: Jeffrey M. Chernak, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, To Review Grant Applications.

Date: April 10, 2000.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5795 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Biotechnology (Teleconference) SEP.

Date: March 24, 2000.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockedge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharee Pepper, PhD, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (301) 594–4933.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5794 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Special Emphasis Panel.
Date: March 20–21, 2000.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 2007.
Contact Person: Patricia H. Hand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 20, 2000.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 20, 2000.
Time: 10:30 am to 11:00 am.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 20, 2000.
Time: 1 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Chhanda L. Ganguly, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 20–21, 2000.
Time: 6 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, Fortune Room, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.
Contact Person: Eugene Vigil, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 21, 2000.
Time: 8:20 am to 6:30 pm.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Mary Clare Walker, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 21, 2000.
Time: 10 am to 5 pm.
Agenda: To review and evaluate grant application.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Michael A. Lang, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–8 (01).
Date: March 21, 2000.
Time: 2 pm to 3 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 21, 2000.
Time: 2 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Philip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 21, 2000.
Time: 3 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sami A. Mayyasi, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 22, 2000.
Time: 8:30 am to 6:30 pm.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Mary Clare Walker, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 22, 2000.
Time: 10 am. to 1 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave., Palladian West, Chevy Chase, MD 20815.
Contact Person: Gamil C. Debbas, PHD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 22, 2000.
Time: 2 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sami A. Mayyasi, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 22–23, 2000.
Time: 8 pm to 8 pm.
Agenda: To review and evaluate grant applications.
Place: Bethesda Ramada, 8400 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Jean D. Sipe, PHD,
Name of Committee: Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, sipej@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23–24, 2000.
Time: 8 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, N.W., Washington, DC 20007–3701.
Contact Person: Ron Manning, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23–24, 2000.
Time: 8 am. to 2 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Ave., NW., Washington, DC 20007.
Contact Person: Richard Panniers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23–24, 2000.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Westin Fairfax Hotel, 2100 Massachusetts Ave., N.W., Washington, DC 20008.
Contact Person: Sally Ann Amero, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, (301) 435–1159, ameros@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23, 2000.
Time: 1 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Anshumali Chaudhari, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4124, MSC 7802, Bethesda, MD 20892, 301/435–1210,

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–7 (03).
Date: March 23, 2000.
Time: 2 pm to 3 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23, 2000.
Time: 2 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Lawrence N. Yager, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, (301) 435–0903, yagerl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23, 2000.
Time: 2:45 p.m. to 4:15 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Anshumali Chaudhari, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23–25, 2000.
Time: 7 pm to 1 pm.
Agenda: To review and evaluate grant applications.
Place: City Plaza Downtown Hotel, 210 South Dubuque Street, Iowa City, IA 52240.
Contact Person: Ramesh K. Nayak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23, 2000.
Time: 12 pm to 1:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda MD 20892 (Telephone Conference Call).
Contact Person: Nabeeh Mourad, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222,

(Catalouge of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 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: March 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5789 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 8–9, 2000.
Time: 2 pm to 10 am.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, Versailles III, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 9, 2000.

Time: 10 am to 4:20 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Versailles III, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.892, 93.893, National Institutes of Health, HHS)

Dated: March 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–5790 Filed 3–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–7978.

Phase III of the National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program

(New)—SAMHSA's Center for Mental Health Services (CMHS) is conducting Phase III of this national evaluation project. To address the research questions in the national evaluation, a longitudinal quasi-experimental design is being used that includes data collection in all grantee sites and comparison sites over a five year period. Data collection methods include interviews with caregivers and youth, site visits, case record reviews, service diaries, and provider surveys. Phase III collects data on child mental health outcomes, family life, and service system development and performance. Child and family outcomes of interest include the following: Child symptomatology and functioning, family functioning and material resources, and caregiver strain. The length of time that families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation. Service system variables of interest include the following: Maturity of system of care development, adherence to system of care principles, coordination and linkages among agencies, and congruence between family services planned versus those received.

Respondents	Number of respondents	Responses/respondent	Burden/response (Hours)	Total burden hours (annualized)
Caregivers	5,339	1.11	2.58	15,286
Youth	3,203	1.06	1.28	4,347
Providers/Administrators	633	0.52	1.25	413
Total	9,175	.....	.....	20,046

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 3, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–5727 Filed 3–8–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–08]

Notice of Proposed Information Collection: Comment Request; Assisted Living Conversion Program (ALCP)

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 8, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, D.C. 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: For copies of the proposed forms and other available information contact Carissa Janis, telephone number (202) 708–3944, extension 2487 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Assisted Living Conversion Program (ALCP)—Application kit, Annual Report, and Line of Credit Control System (LOCCS)/ Voice Response System (VRS) Assisted Living Conversion Program Payment Voucher.

OMB Control Number: None.

Description of the need for the information and proposed use: HUD uses grant applications to evaluate owners' need for and proposed use of grant funds and their ability to administer such funds. The Department will use program-end Annual Reports to determine how well grant funds were used in meeting stated program goals and in providing affordable and high quality assisted living housing and services. Grantees will also be able to evaluate their efforts through the completion of the Annual Report and will have data and evidence of program effectiveness available for both their future use and that of the public. HUD will use the Payment Voucher to monitor use of grants funds for eligible activities over the term of the grant. The Grantee may similarly use this form to track and record their requests for payment reimbursement for grant-funded activities.

Agency Form Numbers, if applicable: HUD–50080–ALCP, Line of Credit Control System (LOCCS)/ Voice Response System (VRS) Assisted Living Conversion Program Payment Voucher.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 140, the total annual responses is 260, and the total annual hours of response are estimated at 4,300.

Status of the proposed information collection: New collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 3, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–5813 Filed 3–08–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–10]

Notice of Submission of Proposed Information Collection to OMB; Urban Homesteading Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due Date:* April 10, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0042) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice Also Lists the Following Information

Title of Proposal: Urban Homesteading Program.

OMB Approval Number: 2506–0042.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Local Urban Homesteading Agencies (LUHAs) which received properties under HUD's Section 810 Urban Homesteading Program. By statue HUD is required to conduct a continuing evaluation of the program. The primary purpose this collection of data is to determine whether the LUHAs are disposing of the properties as required by law and HUD requirements.

Respondents: Not-for-Profit Institutions, State, Local, or Tribal Government.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	150		1		.28		525

Total Estimated Burden Hours: 525.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 2, 2000.

Wayne Eddins,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–5543 Filed 3–8–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–11]

Notice of Submission of Proposed Information Collection to OMB; Competitive Homeless Assistance Program Annual Progress Report (APR)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 10, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0145) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review as required by the Paperwork Reduction Act (44 U.S.C.. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (7) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Competitive Homeless Assistance Program Annual (APR).

OMB Approval Number: 2506–0145.

Form Numbers: HUD–40118.

Description of the Need for the Information and Its Proposed Use: Annual reporting to HUD by grantees receiving funds for homeless assistance programs. The Annual Progress Report (APR) form has been simplified and the Grantee Annual Report (GAR) information collection (previously cleared under 2506–0126) has been consolidated with this collection.

Respondents: Not-for-Profit Institutions, State, Local, or Tribal Government.

Frequency of Submission: Recordkeeping and Reporting.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	4,000		1		40		160,000
Reporting	4,000		1		10		40,000

Total Estimated Burden Hours: 200,000.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 3, 2000.

Wayne Eddins,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–5814 Filed 3–8–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4538–N–02]

Fiscal Year 2000 Notice of Funding Availability (NOFA) for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program: Withdrawal of NOFA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Withdrawal of NOFA.

SUMMARY: This document withdraws the Notice of Funding Availability (NOFA), published on November 8, 1999, that announced the availability of Fiscal Year 2000 funding for the HUD-administered Small Cities Program in New York State under the Community Development Block Grant Program.

DATES: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Yvette Aidara, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1322 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On November 8, 1999 (64 FR 61000), HUD published a Notice of Funding Availability for the HUD-Administered Small Cities Community Development Block Grant Program that announced Fiscal Year 2000 funding for this program. The Department has

administered the Community Development Block Grant (CDBG) Small Cities program in the State of New York since the inception of the State CDBG program. Forty-eight states administer their own State CDBG program. At the request of Governor George E. Pataki, New York, the Department has withdrawn the Notice of Funding Availability for Fiscal Year 2000 funding. The Department will continue to retain control of past grants and multi-year grants made prior to Fiscal Year 2000.

In response to requests from local officials throughout the State and concerns that the State may not immediately possess the expertise to manage the program, the Department had originally proposed a transition process designed to permit a smooth and orderly transfer of the program from HUD administration to State control. The proposed process would have allowed the HUD-administered competition to continue as outlined in the NOFA of November 8, 1999, while the State completed all necessary steps to administer the program effectively. HUD had recommended a transition process in order to avoid any disruption in funding to the grantees. New York officials, however, indicated they would prefer HUD to transfer the program without a transition process.

Therefore, through this Notice, HUD withdraws the NOFA inviting applications for the HUD-administered Small Cities program published on November 8, 1999.

Dated: March 6, 2000.

Joseph D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 00–5753 Filed 3–6–00; 2:58 pm]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Arturo J. Gutierrez, Weston, MA, PRT–023419.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Diane Klumpp, Emigrant, MT, PRT–023635.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 3, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–5719 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment for the Grand Bayou/Gulf Intracoastal Waterway (GIWW) Freshwater Diversion Project, Terrebonne and Lafourche Parishes, Louisiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

The Service announces the availability of the draft EA for the Grand Bayou/GIWW Freshwater Diversion Project. A more detailed description of the project is outlined in the **SUPPLEMENTARY INFORMATION** section below. A Copy of the draft EA may be obtained by sending a written request to the Service's Louisiana Field Office (see **ADDRESSES**). Requests must be made in writing to be processed. This notice is provided pursuant to NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the Service's EA.

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Field Office (see **ADDRESSES**). You also may comment via the internet to ''Ronald__Paille@fws.gov''. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at the telephone numbers listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to the Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the draft EA should be sent to the Service's Field Office (see **ADDRESSES**) and should be received on or before April 10, 2000.

ADDRESSES: Persons wishing to review the draft EA may obtain a copy by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 646 Cajundome Boulevard, Suite 400, Lafayette, Louisiana 70506. Documents will also be available for public inspection by appointment (Attn: Ronald Paille) during normal business hours at the Service Field Office. Written data or comments concerning the draft EA should be submitted to the

Service Field Office. The data and comments must be submitted in writing to be adequately considered in the Service's decision-making process.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Paille, Senior Field Biologist, (see **ADDRESSES** above), telephone: 337/291–3117 or 337/291–3100, facsimile: 337/291–3139.

SUPPLEMENTARY INFORMATION: The Grand Bayou/GIWW Freshwater Diversion Project, was funded through the Coastal Wetlands Planning, Protection and Restoration Act on the Fifth Priority Project List. The project purpose is to reduce loss of coastal wetlands within the project area through increased introduction of freshwater from the Gulf Intracoastal Waterway and by reducing canal-induced saltwater intrusion into the project area.

The proposed project would benefit about 42,690 acres of coastal wetlands by the enlargement of Bayou L'Eau Bleu to increase freshwater inflow. The preferred alternative includes water control structures. They would be installed on the Cutoff Canal, just below its junction with Bayou Pointe au Chien, and on the Island Road Borrow Canal, just west of Bayou Pointe au Chien. These water control structures would be operated to reduce canal-induced saltwater intrusion into project area wetlands.

Dated: March 2, 2000.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 00–5728 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Final Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a Final Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem.

SUMMARY: This notice advises the public that the Final Environmental Impact Statement (FEIS) for Grizzly Bear Recovery in the Bitterroot Ecosystem is available for public review. The FEIS evaluates a proposal to establish an experimental population rule and reintroduce grizzly bears into the Bitterroot Ecosystem in east-central Idaho and western Montana. Six alternatives, including the No Action Alternative, are discussed in the FEIS.

The Bitterroot Ecosystem consists of approximately 44,400 square miles in 10 central Idaho and four western Montana counties, of which 76 percent is in Federal surface ownership. A Citizen Management Committee would be tasked with management implementation responsibility for the experimental population. Reintroduction could result in grizzly bear recovery in the Bitterroot Ecosystem in a minimum of 50 years. A recovered grizzly bear population (approximately 280 bears) potentially could kill an average of 6 cattle and 25 sheep and up to 504 wild ungulates per year. Nuisance bear incidents could average 37 per year. Economic analyses indicate grizzly bear recovery in the Bitterroot Ecosystem would lead to total economic benefits of approximately $40.4 to $60.6 million per year.

DATES: Copies of the FEIS will be mailed to government offices, local and regional libraries, and interested parties who specifically requested the FEIS. A Summary of the FEIS will be mailed to all parties on the mailing list who did not specifically request the entire FEIS. Those interested persons not on the FEIS mailing list may request a copy from the project leader at the address below. It is anticipated that the Environmental Protection Agency will publish a Notice of Availability for this FEIS in the **Federal Register** on March 24, 2000. Public comments will be accepted from March 24, 2000, through April 24, 2000. Public comment on the FEIS is solicited pursuant to the National Environmental Policy Act (NEPA) regulations (40 CFR 1503.1). All agencies and individuals are urged to provide comments and suggestions regarding the FEIS for our review prior to completion of a Record of Decision. All comments received by the end of the comment period will be considered in preparation of the Record of Decision.

All comments received from individuals on our environmental impact statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)]. When requested, comment letters with the names and addresses of the individuals who wrote the comments will generally be provided. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish to withhold your name and or address, you must state this prominently at the beginning of your comments.

ADDRESSES: Written comments should be addressed to Dr. Christopher Servheen, U.S. Fish and Wildlife Service Project Leader, Bitterroot Grizzly Bear FEIS, P.O. Box 5127, Missoula, Montana 59806. The document also is available for viewing and downloading at:<http://www.r6.fws.gov/endspp/grizzly/>. Written comments and materials regarding this information should be sent to the Recovery Coordinator at the address given above or can be mailed electronically to <FW6__grizzly@fws.gov>. 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: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above), at telephone (406) 243–4903.

SUPPLEMENTARY INFORMATION

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 1, 2000.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 00–5729 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On January 21, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 14, page 3472, that an application had been filed with the Fish and Wildlife Service by Zachary Sharp, Department of Earth and Planetary Sciences, University of New Mexico for a permit (PRT–021423) to import canine teeth sections from Atlantic walrus (Odobenus rosmarus rosmarus) from Canada for the purpose of scientific research at the University of New Mexico.

Notice is hereby given that on February 24, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the

requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm. 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: March 3, 2000.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–5720 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–020–4310–EU; NMNM–102567] A Direct Sale of Public Land to Florise Martinez, Santa Fe, NM.

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) and at no less than the estimated fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

New Mexico Principal Meridian

T. 17 N., R. 9 E.,
section 31, lot 25.

The subject public land containing 1.33 acres, more or less will be sold to Florise Martinez of Santa Fe, NM. The sale is for the purpose of resolving unauthorized, inadvertent use of the land for forty years. The proposed sale is for surface rights only. The disposal is consistent with the Taos Resource Area Management Plan dated October 1988, state and local government programs, plans, and applicable regulations.

EFFECTIVE DATE: Interested parties may submit comments on the direct sale on or before April 24, 2000.

ADDRESSES: Comments should be sent to the Taos Field Office Manager, BLM, 226 Cruz Alta Road, Taos, NM 87571.

FOR FURTHER INFORMATION CONTACT: Hal Knox, BLM, Taos Field Office, 226 Cruz Alta Rd., Taos, NM 87571, or at (505) 758–8851.

SUPPLEMENTARY INFORMATION: The direct sale will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document or other document of conveyance is available for review at this BLM office.

Publication of this notice in the **Federal Register** will segregate the public land from appropriations under the public land laws including the mining laws but not the mineral leasing laws. This segregation will terminate upon the issuance of a patent or other document of conveyance, 270 days from date of publication of this notice in the **Federal Register** or upon publication of Notice of Termination, which ever occurs first.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 17, 2000.

Ron Huntsinger,

Field Office Manager.

[FR Doc. 00–5711 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Civil Penalties

AGENCY: Minerals Management Service (MMS).

ACTION: Notice Summarizing OCS Civil Penalties Paid, January 1, 1999, through December 31, 1999.

SUMMARY: This notice provides a listing of civil penalties paid January 1, 1999, through December 31, 1999, for violations of the OCS Lands Act. The goal of the MMS OCS Civil Penalties Program is to assure safe and clean operations on the OCS. Through the pursuit, assessment, and collection of civil penalties and referrals for the consideration of criminal penalties, the program is designed to encourage compliance with OCS statutes and regulations. The purpose of publishing the penalties summary is to provide information to the public on violations of special concern in OCS operations and to provide an additional incentive for safe and environmentally sound operations.

FOR FURTHER INFORMATION CONTACT: Greg Gould (Program Coordinator), (703) 787–1591.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA 90) strengthened section 24 of the OCS Lands Act Amendments of 1978. Subtitle B of OPA 90, titled ''Penalties,'' increased the amount of the civil penalty from a maximum of $10,000 to a maximum of $20,000 per violation for each day of noncompliance. More importantly, in cases where a failure to comply with applicable regulations constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life); property; any mineral deposit; or the marine, coastal, or human environment; OPA 90 provided the Secretary of the Interior (Secretary) with the authority to assess a civil penalty without regard to the requirement of expiration of a period of time allowed for corrective action.

On August 8, 1997 (62 FR 42668), MMS published new regulations implementing the civil penalty provisions of the OCS Lands Act. Written in ''plain English,'' the new question-and-answer format provides a better understanding of the OCS civil penalty process. In addition, the provisions of OPA 90 require the Secretary to adjust the maximum civil penalty to reflect any increases in the Consumer Price Index. The new rule increased the maximum civil penalty to $25,000 per day, per violation. Please note, subsequent to publishing the new regulations, MMS made several corrections and amendments, including the appeals procedures. These were published at 63 FR 42711, 8/11/98; 64 FR 9066, 2/24/99; 64 FR 9065, 2/24/99 and 64 FR 26257, 5/13/99.

Between August 18, 1990, and January 31, 2000, MMS initiated 297 civil penalty reviews. The MMS assessed 186 civil penalties and collected $3,539,520 in fines. Thirty-six cases were dismissed, 2 cases were merged, and 73 are under review.

On September 1, 1997, the Associate Director for Offshore Minerals Management issued a notice informing lessees and operators of Federal oil, gas, and sulphur leases on the OCS that MMS will annually publish a summary of OCS civil penalties paid. The annual summary will highlight the identity of the party, the regulation violated, and the amount paid. The following table provides a listing of the penalties paid between January 1, 1999, and December

31, 1999. Please note that MMS published a direct final rule (5/29/98, 63 FR 29477) that renumbers each section in 30 CFR part 250. A quarterly update of this list, along with additional information related to the renumbering of the regulations, is posted on the MMS worldwide web home page, http://www.mms.gov.

In the following chart for regulations violated before the renumbering took effect, we show the regulation number at the time of violation and the redesignated section number.

OCS CIVIL PENALTIES PAID

Calendar Year 1999

Operator name and case No.	Violation summary and violation date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
W&T Offshore, Inc. G–1995–006.	The subsurface safety devices (SSSD's) for 3 wells were removed and the wells were left unattended. 1/1/91–1/6/91, 10/11/91–10/23/91, 8/18/90–8/21/90, 10/27/90–11/2/90.	$15,000 6/8/99	250.121(h)(3) Redesignated 250.801(h)(3)
W&T Offshore, Inc. G–1995–007.	The SSSD was removed from Well No. 34 and left unattended. 8/20/90–10/26/90.	$34,000 6/8/99	250.121(h)(3) Redesignated 250.801(h)(3).
Shell Offshore, Inc. G–1997–035.	The pressure safety high/low (PSHL) sensors for the departing 6-inch pipeline were found bypassed. 7/11/97.	$10,000 6/10/99	250.123(c)(1) Redesignated 250.803(c)(1).
ORYX Energy Company G–1997–039.	A 5-by-7 foot open hole in grating not flagged or barricaded. 5/14/97–5/14/97.	$5,000 2/1/99	250.20(a) Redesignated 250.120(a)
Amoco Production Company G–1997–047.	The emergency shut down (ESD) station located near the driller's console was not connected to the MI 622D ESD system from 9/12/97 (workover start date) through 9/16/97. 9/12/97–9/16/97.	$25,000 1/4/99	250.73 Redesignated 250.503
Energy Development Corporation G–1998–004.	The surface controlled subsurface safety valve (SCSSV) was bypassed on Wells A–1 and A–2. The level safety high (LSH) was bypassed on the corrugated plate interceptor (CPI). There was no fire detection system in the bunkhouse/quarters. A sheen measuring ⅜ mile long by 10 yards wide occurred when the sump pump was inoperable. 4/29/97.	$34,000 11/17/99	250.123(b)(9) 250.123(c)(1) 250.40(a) Redesignated 250.803(b)(9) 250.803(c)(1) 250.300(a)
Apache Corporation G–1998–010	The pressure safety high (PSH) and pressure safety low (PSL) for the first stage compressor discharge were disconnected. 5/2/96.	$6,000 10/28/99	250.123(c)(1) Redesignated 250.803(c)(1)
Aviva America, Inc. G–1998–011 ..	Not testing gas-detection system (1 period) and not testing fire-detection system (2 periods). 6/23/97–6/30/97.	$3,000 3/25/99	250.124(a)(8) Redesignated 250.804(a)(8)
Vastar Resources, Inc G–1998–013.	Condensate accumulator, condensate pump, skimmer pump and flotation pump not equipped with fusible material. Pressure safety valve (PSV) on compressor 1st stage discharge and PSH on compressor 1st and 2nd stage discharges set above the working pressure. 7/14/97–1/21/98.	$20,000 7/8/99	250.122(b) 250.123(b)(1)(i) 250.123(b)(1)(iii) Redesignated 250.802(b) 250.803(b)(1)(i) 250.803(b)(1)(iii)
Chieftain International (U.S.) Inc. G–1998–019.	Pollution coming from the CPI Unit water overboard line, the CPI Unit LSH failed to activate and shut-in all wells. Well B–15 flows into low pressure system but serviced through high pressure system. The total select group on the panel was in bypass. Therefore, Well B–15 would not shut-in. 10/10/97.	$20,000 2/10/99	250.123(c)(1) Redesignated 250.803(c)(1)
Callon Petroleum Operating Company G–1998–022.	The level safety low (LSL) for the High Pressure Separator was leaking gas and water. 2/7/97.	$5,000 3/11/99	250.20(a) Redesignated 250.120(a)
Vintage Petroleum, Inc. G–1998–026.	The manual block valve below the pressure safety valve on the compressor discharge was detected in the closed position. 1/19/98–1/28/98.	$50,000 2/16/99	250.123(c)(1) Redesignated 803(c)(1)
Shell Frontier Oil & Gas, Inc. G–1998–029.	No record of testing PSV's on 1st stage and 2nd stage compressor discharge units located on South Pass 62 A, B, and C/D platforms. 9/29/97.	$36,000 7/22/99	250.124(a)(2) Redesignated 804(a)(2)
Stone Energy Corporation G–1998–038.	Operator failed to render a slop oil tank inert prior to conducting burning operations on the tank. This action also was a failure to comply with the Welding, Burning, and Hot-Tapping Plan. 4/11/97.	$12,000 1/22/99	250.52(d)(4) Redesignated 402(d)(4)
Shell Offshore, Inc. G–1998–039 ..	The subsurface safety valve (SSSV) was removed on Well JA–1 for routine operations and was left unattended. 1/26/98–1/28/98.	$45,000 4/6/99	250.121(h)(3) Redesignated 801(h)(3)
Norcen Explorer, Inc. G–1998–040	The drilling unit was not equipped with an operable traveling block safety device. 1/31/98–2/10/98.	$165,000 2/17/99	250.51(b)(1) Redesignated 401(b)(1)
Basin Exploration, Inc. G–1998–044.	Rig personnel were observed working very close to an open hole on the rig drill floor without utilizing fall protection gear. 1/28/98.	$15,000 6/3/99	250.20(a) Redesignated 120(a)

OCS CIVIL PENALTIES PAID—Continued

Calendar Year 1999

Operator name and case No.	Violation summary and violation date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
Chevron U.S.A., Inc. G–1998–047	The 10-inch bulk oil departing pipeline did not have a PSL installed. 6/1/97.	$10,000 4/26/99	250.154(b)(3) Redesignated 1004(b)(3)
Chevron U.S.A., Inc. G–1998–050	The SCSSV was bypassed in Well No. 3. 5/30/98–6/3/98.	$25,000 3/29/99	250.123(c)(1) Redesignated 803(c)(1)
Pennzoil Exploration and Production Company G–1998–054.	The SCSSV for Well A–3 was blocked out of service. 6/24/98.	$12,000 5/12/99	250.123(c)(1) Redesignated 803(c)(1)
Texaco Exploration and Production, Inc. G–1998–056.	The SSV relay for Well B–6 was bypassed and blocked out of service. 8/5/98–8/6/98.	$16,000 5/12/99	250.803(c)(1)
Basin Exploration, Inc. G–1998–057.	The SCSSV for Well A–2 was bypassed and blocked out of service. 4/19/98–4/20/98.	$12,000 7/6/99	250.123(c)(1) Redesignated 803(c)(1)
Conoco, Inc. G–1998–061	During testing, the PSH #1 on the departing KAH–400 pipeline did not shut-in the associated shutdown valve of the KAA–500 pipeline. PSH #2 on the KAH–400 pipeline was pinned out of service thus bypassing the associated shutdown valve on the KAH–400 pipeline. Well N–009 tubing plug tested 4/29/98; found leaking; attempted repair on 5/8/98. 7/20/98 5/8/98–7/20/98.	$64,000 12/13/99	250.1004(b)(3) 250.1004(b)(4) 250.1004(c) 250.124(a)(1)(iii) The last regulation was redesignated 250.804(a)(1)(iii)
Stone Energy Corporation G–1998–063.	An injury occurred when welding and burning operations were conducted within 35 feet of master safety system, high pressure separator and high pressure oil separator. 3/11/98.	$35,000 7/30/99	250.52(a) Redesignated 402(a)
Forcenergy, Inc. G–1998–064	The flow safety valves for Wells Nos. 11 and 13 were not tested within the required timeframe. 9/17/97–8/28/98.	$28,000 11/3/99	250.124(a)(5) Redesignated 804(a)(5)
Seneca Resources Corporation G–1998–066.	Compressor #3 pressure safety lows (PSL's) were in a bypass mode on 11/25/97 (i.e., Class C lockout for Compressor #3 was in bypass). They were unattended and were not in bypass due to testing, start-up, or maintenance. 11/25/97.	$18,000 7/29/99	250.123(c)(1) Redesignated 803(c)(1)
Texaco Exploration and Production, Inc. G–1999–003.	The LSL #2 for glycol reboiler, BBC–9042, and the PSHL for the downtherm pumps, PBA–9100A and PBA–9100B, were bypassed (had tie-wraps around relay pins on control panel holding them in); the one PSHL protects both pumps. 8/18/98–8/19/98 8/19/98.	$17,000 12/17/99	250.803(c)(1)
Texaco Exploration and Production, Inc. G–1999–014.	The PSHL and ESD for Well No. 46–D were bypassed. 9/21/98 9/25/98.	$12,000 11/15/99	250.804(a)(1)(iii) 250.803(c)(1)

Dated: February 17, 2000.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 00–5712 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

Redwood National Park Boundary Revision

July 16, 1999.

AGENCY: National Park Service; Interior.

ACTION: Notice of boundary revision, Redwood National Park.

SUMMARY: This notice announces a revision of the boundaries of Redwood National Park to include within the boundaries six parcels of land adjacent to the park.

FOR FURTHER INFORMATION CONTACT: Sondra S. Humphries, Chief, Pacific Land Resources Program Center at (415) 427–1416.

SUPPLEMENTARY INFORMATION: Pursuant to Sec. 2 (a) of Public Law 90–545 approved October 2, 1968, notice is hereby provided that the boundaries of Redwood National Park are modified, effective as of the date of publication of this notice, to include all that certain property as noted on map REDW 167–60501a, August 1998 situated in the County of Humboldt, State of California. Detailed information is on file at the National Park Service, Pacific Land Resources Program Center, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372.

Dated: July 16, 1999.

James R. Shevock,

Associate Regional Director for Resources, Stewardship and Partnerships, Pacific West Region.

Note: This document was received at the Office of the Federal Register on March 6, 2000.

[FR Doc. 00–5829 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Grant Funds—Fiscal Year 2000 Demonstration Project Grant Program—Chesapeake Bay Gateways and Water Trails Initiative

AGENCY: National Park Service (NPS); Interior.

ACTION: Notice of FY2000 demonstration project grant program—Chesapeake Bay Gateways and Water Trails Initiative.

SUMMARY: This notice announces the availability of grant funds under the Chesapeake Bay Initiative Act of 1998 (the Act), Public Law 105–312, and provides information on the grant application process.

APPLICATION DUE DATE: The NPS will accept grant applications postmarked or sent via overnight delivery on or before April 14, 2000. Applications should be sent to: Jonathan Doherty, Program Manager, National Park Service—Chesapeake Bay Program Office, 410 Severn Avenue, Suite 109, Annapolis, MD 21403.

MORE INFORMATION: Complete information about the demonstration project grant program and the application requirements can be found on the internet at http://www.chesapeakebay.net/gateways.htm. Questions should be directed to: Fred Herling, National Park Service, 200 Chestnut Street, 3rd floor, Philadelphia, PA 19106, phone number 215–597–1782.

ELIGIBILITY: For Fiscal Year 2000, $400,000 is available for demonstration project grants to implement the Act. Grants may be provided to non-profit organizations, state and local government agencies for projects that support a collaborative, partnership network linking the many land-and water-based resources and special places around the Chesapeake Bay region. Grants will be awarded for projects that best demonstrate the initial components of the network. Applications will be required to focus on achieving one or more of the following: Enhancing place-based interpretation and education about the Bay and its related resources, facilitating increased access (physical and informational) to the Bay and its related resources, and fostering conservation and restoration of the Bay and its related resources. With the exception of proposals for new or enhanced water trails (which could be located anywhere within the Chesapeake Bay watershed), all other proposals must be for projects located within the main portion of the Bay or along the tidal portions of its tributaries.

MATCHING FUNDS: Applicants may request federal funding for up to 50% of the total project cost. Matching share value may include in-kind contributions of services or materials, cash or revenue sources. Other federal funds may not be used as a matching share. No more than 10% of all eligible project costs can be used for administrative purposes.

SCHEDULE: Official Announcement: February 28, 2000; Application Due Date: Postmarked or sent via overnight delivery by April 14, 2000; Notification to Applicants: May 12, 2000; Additional Materials Due from Successful Applicants: June 2, 2000; Anticipated Date of Grant Award: June 15, 2000.

Dated: March 1, 2000.

Chrysandra L. Walter,

Deputy Regional Director, National Park Service.

[FR Doc. 00–5828 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: Notice is hereby given that the comment period for the Draft Supplemental Environmental Impact Statement to the 1996 Final Supplement to the Final Environmental Statement for the Animas-La Plata Project is extended an additional 30 days to April 17, 2000.

DATES: The end of the public comment period, as noted in the **Federal Register** (65 FR 2428) on January 14, 2000, was March 17, 2000. The public comment period is now extended to April 17, 2000.

ADDRESSES: Written comments should be addressed to Pat Schumacher, Manager, Four Corners Division, Western Colorado Area Office, 835 Each Second Avenue, Suite 300, Durango, Colorado 81301–5475; faxogram (970) 385–6539; E-mail ALPDSEISComments@uc.usbr.gov.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Pat Schumacher, Manager, Four Corners Division, (970) 385–6590.

Dated: March 3, 2000.

Eluid L. Martinez,

Commissioner of Reclamation.

[FR Doc. 00–5755 Filed 3–8–00; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: The U.S. International Trade Commission (USITC) has submitted the following information collection requirements to the Office of Management and Budget (OMB) requesting emergency processing for review and clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Commission has requested OMB approval of this submission by COB March 14, 2000.

EFFECTIVE DATE: February 28, 2000.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332–409, The Impact on the U.S. Economy of Including the United Kingdom in a Free Trade Arrangement with the United States, Canada, and Mexico, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the Committee on Finance of the U.S. Senate. The Commission expects to deliver the results of its investigation to the Committee by August 18, 2000.

SUMMARY OF PROPOSAL:

(1) Number of forms submitted: one.

(2) Title of form: The Impact on the U.S. Economy of Including the United Kingdom in a Free Trade Arrangement with the United States, Canada, and Mexico Telephone Survey for U.S. and Foreign Businesses.

(3) Type of request: new.

(4) Frequency of use: Telephone survey, single data gathering, scheduled for 2000.

(5) Description of respondents: Representative selection of U.S. and foreign firms and organizations that export products to the United States, United Kingdom, Canada, and Mexico.

(6) Estimated total number of respondents: 300.

(7) Estimated total number of hours to complete the forms: 150.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in

a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from Sylvia McDonough, Office of Industries, USITC (202–205–3393). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the survey is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: February 29, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–5643 Filed 3–8–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–406 & 408 (Review)]

Electrolytic Manganese Dioxide From Greece and Japan; Notice of Commission Determination To Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing.

SUMMARY: Upon request of domestic producers Kerr-McGee Chemical LLC and Chemetals, Inc., (''Petitioners'') and domestic importer Eveready Battery Co., (''Eveready'') the Commission has determined to conduct a portion of its hearing in the above-captioned investigations scheduled for March 2, 2000, in camera. See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 C.F.R. 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Willis S. Martyn, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–2784, e-mail wmartyn@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Petitioners and Eveready have justified the need for a closed session. Petitioners and Eveready seek a closed session to allow for a discussion of their business operations. In this investigation, the aggregate data of the domestic industry and information on purchasers' operations are business proprietary information (BPI). Because discussion by Petitioner and Eveready of their own operations and of the domestic industry's data will necessitate disclosure of business proprietary information (BPI), it can only occur if a portion of the hearing is held in camera. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will begin with a public presentation by the parties opposing revocation of the antidumping duty order (the Petitioners), with questions from the Commission. In addition, the hearing will include a 40-minute in camera session for a confidential presentation by Petitioners, a rebuttal presentation by foreign producers Tosoh Hellas, A.I.C., and Tosoh Corp. (collectively, ''Tosoh''), a confidential presentation by Eveready, a rebuttal presentation by Petitioners, and for questions from the Commission relating to the BPI. Petitioners will receive a total of 20 minutes, with Eveready and Tosoh receiving the remainder. For any in camera session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. See 19 C.F.R. 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the in camera session will be taken from their respective overall allotments for the hearing. All persons planning to attend the in camera portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 C.F.R. 201.39) that, in her opinion, a portion of the Commission's hearing in Electrolytic Manganese Dioxide from Greece and Japan, Invs. Nos. 731–TA–406 & 408 (Review) may be closed to the public to prevent the disclosure of BPI.

Issued: March 2, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–5644 Filed 3–8–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–868–871 (Preliminary)]

Steel Wire Rope From China, India, Malaysia, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–868–871 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China, India, Malaysia, and Thailand of steel wire rope, other than of stranded wire and other than brass plated wire, not fitted with fittings or made up into articles, provided for in subheadings 7312.10.60 and 7312.10.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping investigations in 45 days, or in this case by April 17, 2000. The Commission's views are due at the Department of Commerce within five business days thereafter, or by April 24, 2000.

For further information concerning the conduct of these investigations and rules of general application, consult the

Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 1, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Taylor (202–708–4101), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on March 1, 2000, by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 22, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Karen Taylor (202–708–4101) not later than March 20, 2000, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 27, 2000, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: March 3, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–5784 Filed 3–8–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 USC 9622(d), notice is hereby given that on February 22, 2000, a proposed Consent Decree (''Decree'') in *United States* v. *Northrop Grumman Corporation, et al.,* Civil Action No. CV–00–1070, was lodged with the United States District Court for the Eastern District of New York. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 USC 9601 *et seq.,* on behalf of the U.S. Environmental Protection Agency (''EPA'') against defendants Northrop Grumman Corporation, Marmon Corporation. Occidental Chemical Corporation, Town of Oyster Bay, Jakobson Shipyard, Inc., and Keyspan Corporation relating to the Syosset Landfill Superfund Site (''Site'') located in the Village of Syosset, in the Town of Oyster Bay, Nassau County, New York. The Complaint alleges that the Town of Oyster Bay is liable as an owner and/or operator of the Site pursuant to Section 107(a)(2) of CERCLA, 42 USC 9607(a)(2). The remaining defendants are liable as generators, or successors to generators, who arranged for the disposal of hazardous substances possessed by them at the Site pursuant to Section 107(a)(3) of CERCLA, 42 USC 9607(a)(3).

Under the terms of the Decree, the settling defendants will deposit into interest-bearing escrow accounts, within 30 days of receipt of this Notice, $890,000 in reimbursement of EPA's past response costs incurred at the Site. Within 20 days after notice of entry of the Decree, settling defendants will withdraw and pay to the United States all principal and accrued interest from the designated escrow accounts.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, PO Box 7611, Washington, DC 20044–7611, and should refer to United States v. Northrop Grumman Corporation, et al., Civil Action No. CV–00–1070, D.J. Ref. 90–11–2–491/1.

The Decree may be examined at the Office of the United States Attorney,

Eastern District of New York, One Pierrepont Plaza, Brooklyn, New York 11201, and at U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, Department of Justice, PO Box 7611, Washington DC 20044–7611. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–5714 Filed 3–8–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in the action entitled *United States of America* v. *Raymark Industries, Inc., et al.,* Civil Action No. 3:97CV00035 (D. Conn.), was lodged on February 18, 2000 with the United States District Court for the District of Connecticut. The proposed consent decree resolves potential claims of the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. §§ 9601–9675, against third-party defendant the Town of Stratford, Connecticut. These potential claims are for recovery of costs incurred and to be incurred by the United States with respect to certain municipal properties included within the Raymark Industries, Inc. Superfund Site (''Site'') in Stratford, Connecticut.

Under the terms of the proposed consent decree, the Town of Stratford will (1) Pay the United States $487,832 in partial reimbursement of past and future federal response costs with respect to the Site; (2) Provide EPA with continuing access to Town properties that are part of the Site; and (3) Establish a public registry of those municipal and residential properties within the Town of Stratford that contain residual hazardous waste which was not removed during response actions by EPA or the State of Connecticut at these properties.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, and should refer to *United States* v. *Raymark Industries, Inc., et al.,* Civil Action No. 3:97CV00035 (D. Conn.), DOJ Ref. No. 90–7–1–545E.

The proposed consent decree may be examined at the offices of EPA Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023, and the Office of the United States Attorney, 915 Lafayette Blvd., Bridgeport, CT 06604. A copy may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611. In requesting a copy by mail, please refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page reproduction costs for the Decree and Appendix) made payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 00–5713 Filed 3–8–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

March 1, 2000.

The Department of Labor has submitted the following (see below) public information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested March 24, 2000. A copy of the ICR with applicable supporting documentation, may be obtained by contacting the Department of Labor, Departmental Clearance Officer, Ira Mills at (202) 219–5096, ext. 143, or by E-mail at Mills-Ira@dol.gov. The proposed Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1), the subject of this ICR, is available for viewing and downloading through the Department of Labor's Internet site (http://www.efast.dol.gov).

Comments and questions about the ICR listed below should be sent to the Office of Information and Regulatory Affairs, Attn: Desk Officer for Pension and Welfare Benefits Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316) within 10 days of the date of this publication in **Federal Register.** After that date and through May 8, 2000, further comments may be submitted to Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210, in response to its separate Notice and request for comments also published in today's **Federal Register.**

OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used:
- Enhance the quality, utility, and clarity of the information to be collected:
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers.

OMB Number: 1210– 0NEW.

Frequency: On occasion.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Total Respondents: 60,250.

Total Responses: 60,250.

Estimated Total Burden Hours: 20,100.

Estimated Total Burden Cost: $22,900.

Description: Under part 1 of Title 1 of the Employee Retirement Income Security Act of 1974 (ERISA), Title IV of ERISA, and the Internal Revenue

Code of 1986, as amended, administrators of pension and welfare benefit plans (collectively, employee benefit plans) subject to those provisions and employers sponsoring certain fringe benefit plans and other plans of deferred compensation are required to file returns/reports annually concerning the financial condition and operations of the plans. These reporting requirements are satisfied generally by filing the Form 5500 Series in accordance with its instructions and the related regulations.

In August of 1998, the Department of Labor, Pension and Welfare Benefits Administration, Department of the Treasury, Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (collectively, the Agencies) received approval for the revised and streamlined Form 5500 Series, subject to the Agencies' solicitation of public comments on a computer scannable format for the Form 5500. A notice requesting comments from the public on computer scannable formats was published by the Agencies on June 28, 1999 (64 FR 34686). The final computer scannable ''hand print'' and ''machine-print'' formats for the Form 5500 were announced on February 2, 2000 in connection with the Agencies' Notice of Adoption of Revised Forms (65 FR 5026).

The computer scannable formats were developed to facilitate the implementation of the new computerized system to process the Form 5500 and IRS Form 5500–EZ—the ERISA Filing and Acceptance System, or EFAST. EFAST is designed to simplify and expedite the receipt and processing of the new Form 5500 and Form 5500–EZ by relying on computer scannable forms and electronic filing technologies. The computer scannable forms are being implemented for 1999 plan year filings. The Form 5500 and Form 5500–EZ for 1999 plan years also may be filed electronically via modem, magnetic tape, floppy diskette, or CD–ROM.

In order to participate in the electronic filing program, applicants will be required to submit an Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1), the subject of this ICR. The Internal Revenue Service currently uses forms for similar purposes. This new EFAST form was designed to meet the needs of the new processing system.

Applicants who may file the Form EFAST–1 include: (1) Individuals applying for an electronic signature to sign a Form 5500 or 5500–EZ as, or on behalf of, plan administrators, employers/plan sponsors, or Direct Filing Entities (DFEs) using modem, magnetic tape, floppy diskette, or CD–ROM to file electronically; (2) transmitters (a company, trade, business, or other person) applying for codes to transmit Forms 5500 and/or Forms 5500–EZ for electronic filing using modem, magnetic tape, floppy diskette, or CD–ROM; and, (3) software developers (a company, trade, business, or other person that creates, programs, or otherwise modifies computer software) applying for codes required to develop EFAST-compliant computer software for electronically preparing and filing the Form 5500 and/or Form 5500–EZ. Applicants will provide some or all of the following information depending on applicant type: name and title of applicant, mailing address, Employer Identification Number (EIN), telephone number, facsimile number and e-mail address (optional), contact person if different than applicant, and a signed agreement concerning the terms and conditions of the electronic filing program. Applicants will receive, depending on applicant type, some or all of the following: electronic signature; filer identification number; personal identification number; encryption key; electronic filing identification number; password; and software developer ID. Applicants will use these codes, as applicable, in connection with electronic filing, electronic transmission, or developing EFAST software for the Form 5500 and 5500–EZ.

The information provided by the applicants on EFAST–1, combined with the codes supplied to the applicants by the program, will allow EFAST to verify a filer, transmitter or software developer's standing as a qualified participant in the EFAST electronic filing program for the Form 5500 and 5500–EZ. EFAST–1 information also will establish a means of contact between the EFAST program and filers, transmitters, and software developers for information exchange.

Maureen D. Hill,

Acting Departmental Clearance Officer.

[FR Doc. 00–5764 Filed 3–8–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on April 12 and 13, 2000, in Room N 3437 A–D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to the public and will begin at 9 am lasting until approximately 4:30 p.m. the first day, April 12. On April 13, the meeting will begin at 9:00 a.m. and last no later than 4:00 p.m. However, if work is completed earlier on the draft report the committee will be working on, the meeting may end sooner.

During its November 1998 meeting, NACOSH decided that one of its areas of activity over the next two years would be to study OSHA's standards development process. The Committee has now completed its study after holding panel discussions during the last four meetings involving internal staff and members of the public who were involved with the OSHA standards setting process. This included people who had been involved with the development of the methylene chloride standard; those who had served on two types of advisory committees; representatives of consensus standards setting organizations and other professional associations; and representatives of other Federal regulatory agencies. During its April 12–13 meeting, the committee will be going over its draft report and recommendations in full detail. It is difficult to estimate how long this will take, but the first afternoon and all of the second day have been dedicated to this process.

Other agenda items will include an overview of current activities of the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH) which will be scheduled for the first morning, April 12.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Veneta Chatmon (phone: 202–693–1912; FAX: 202–693–1634) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–693–2350). For additional information contact: Joanne Goodell, Occupational Safety and Health Administration (OSHA); Room N–3641, 200 Constitution Avenue NW, Washington, DC, 20210 (phone: 202–693–2400; FAX: 202–693–1641; e-mail joanne.goodell@osha.gov; or at www.osha.gov).

Dated: Signed at Washington, DC, this 3rd day of March, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 00–5766 Filed 3–08–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Information Collection Request Submitted for Public Comment

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. By this notice, the Department is soliciting comments concerning the Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice. The proposed Form EFAST–1 is also available for viewing and downloading through the Department of Labor's Internet site (http://www.efast.dol.gov).

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 8, 2000.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information. Send comments to Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Under part 1 of Title 1 of the Employee Retirement Income Security Act of 1974 (ERISA), Title IV of ERISA, and the Internal Revenue Code of 1986, as amended, administrators of pension and welfare benefit plans (collectively, employee benefit plans) subject to those provisions and employers sponsoring certain fringe benefit plans and other plans of deferred compensation are required to file returns/reports annually concerning the financial condition and operations of the plans. These reporting requirements are satisfied generally by filing the Form 5500 Series in accordance with its instructions and the related regulations.

In August of 1998, the Department of Labor, Pension and Welfare Benefits Administration, Department of the Treasury, Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (collectively, the Agencies) received approval for the revised and streamlined Form 5500 Series, subject to the Agencies' solicitation of public comments on a computer scannable format for the Form 5500. A notice requesting comments from the public on computer scannable formats was published by the Agencies on June 28, 1999 (64 FR 34686). The final computer scannable ''hand print'' and ''machine-print'' formats for the Form 5500 were announced on February 2, 2000 in connection with the Agencies' Notice of Adoption of Revised Forms (65 FR 5026).

The computer scannable formats were developed to facilitate the implementation of the new computerized system to process the Form 5500 and the IRS Form 5500–EZ—the ERISA Filing and Acceptance System, or EFAST. EFAST is designed to simplify and expedite the receipt and processing of the new Form 5500 and Form 5500–EZ by relying on computer scannable forms and electronic filing technologies. The computer scannable forms are being implemented for 1999 plan year filings. The Form 5500 and Form 5500–EZ for 1999 plan years may also be filed electronically via modem, magnetic tape, floppy diskette, or CD–ROM.

In order to participate in the electronic filing program, applicants will be required to submit an Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1), the subject of this ICR. The Internal Revenue Service currently uses forms for similar purposes. This new EFAST form was designed to meet the needs of the new processing system.

Applicants who may file the Form EFAST–1 include: (1) Individuals applying for an electronic signature to sign a Form 5500 or 5500–EZ as, or on behalf of, plan administrators, employers/plan sponsors, or Direct Filing Entities (DFEs) using modem, magnetic tape, floppy diskette, or CD–ROM to file electronically; (2) transmitters (a company, trade, business, or other person) applying for codes to transmit Forms 5500 and/or Forms 5500–EZ for electronic filing using modem, magnetic tape, floppy diskette, or CD–ROM; and, (3) software developers (a company, trade, business, or other person that creates, programs, or otherwise modifies computer software) applying for codes required to develop EFAST-compliant computer software for electronically preparing and filing the Form 5500 and/or Form 5500–EZ. Applicants will provide some or all of the following information depending on applicant type: name and title of applicant, mailing address, Employer Identification Number (EIN),

telephone number, facsimile number and e-mail address (optional), contact person if different than applicant, and a signed agreement concerning the terms and conditions of the electronic filing program. Applicants will receive, depending on applicant type, some or all of the following: electronic signature; filer identification number; personal identification number; encryption key; electronic filing identification number; password; and software developer ID. Applicants will use these codes, as applicable, in connection with electronic filing, electronic transmission, or developing EFAST software for the Form 5500 and 5500–EZ.

The information provided by the applicants on EFAST–1, combined with the codes supplied to the applicants by the program, will allow EFAST to verify a filer, transmitter, or software developer's standing as a qualified participant in the EFAST electronic filing program for the Form 5500 and 5500–EZ. EFAST–1 information will also establish a means of contact between the EFAST program and filers, transmitters, and software developers for information exchange.

II. Review Focus

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

III. Current Actions

Currently, the Pension and Welfare Benefits Administration is requesting comments on the proposed Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1), the subject of this ICR. Although the Department has submitted the ICR to the Office of Management and Budget (OMB) using emergency review procedures, [1] and has requested approved by March 24, 2000, the Department will take comments received by May 8, 2000 into consideration in finalizing the Form EFAST–1, and in its submission to OMB for continuing approval of the ICR.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers.

Agency Form: EFAST–1.

OMB Number: 1210–NEW.

Frequency: On occasion.

Affected Public: Individuals or households; business or other for-profit; Not-for-profit institutions.

Total Respondents: 60,250.

Total Responses: 60,250.

Estimated Total Burden Hours: 20,100.

Estimated Total Burden Cost: $22,900.

Dated: March 3, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–5765 Filed 3–8–00; 8:45 am]

BILLING CODE 4510–29–M

[1] *See* the notice of Submission for OMB Emergency Review published by the Office of the Secretary, Department of Labor, which is also published in today's **Federal Register**.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting—March 2, 2000

TIME AND DATE: 10:00 a.m., Thursday, March 9, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Proposed Settlement Judge Rule (Notice of proposed rulemaking was published at 64 Fed. Reg. 61236 (Nov. 10, 1999)).

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 00–5834 Filed 3–6–00; 4:13 pm]

BILLING CODE 6735–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before April 10, 2000, to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Virginia Huth, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on December 21, 1999 (64 FR 71507). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the

collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request to Microfilm Records.

OMB number: 3095–0017.

Agency form number: None.

Type of review: Regular.

Affected public: Companies and organizations that wish to microfilm archival holdings in the National Archives of the United States or a Presidential library for micropublication.

Estimated number of respondents: 5.

Estimated time per response: 10 hours.

Frequency of response: On occasion (when respondent wishes to request permission to microfilm records).

Estimated total annual burden hours: 50.

Abstract: The information collection is prescribed by 36 CFR 1254.92. The collection is prepared by companies and organizations that wish to microfilm archival holdings with privately-owned equipment. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.94, to evaluate the records for filming and to schedule use of the limited space available for filming.

Dated: March 2, 2000.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 00–5749 Filed 3–8–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Council on the Humanities; Meeting

March 3, 2000.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, D.C. on March 27–28, 2000.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, N.W., Washington, D.C. A portion of the morning and afternoon sessions on March 27–28, 2000, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on Mary 27, 2000 will be as follows:

Committee Meetings

(Open to the Public)
Policy Discussion

9–10:30 a.m.

Education Programs—Room M–07
Federal/State Partnership—Room 507
Preservation and Access/Challenge Grants—Room 415
Public Programs—Room 420
Research Programs—Room 315

(Closed to the Public)
Discussion of specific grant applications and programs before the Council

10:30 a.m. until Adjourned

Education Programs—Room M–07
Federal/State Partnership—Room 507
Preservation and Access/Challenge Grants—Room 415
Public Programs—Room 420
Research Programs—Room 315

1:30–2:30 p.m. Jefferson Lecture Committee Meeting—Room 430

The morning session on March 28, 1999 will convene at 9:15 a.m., in the 1st Floor Council room, M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting

Reports
A. Introductory Remarks and Presentations
B. Staff Report
C. Congressional Report
D. Reports on Policy and General Matters
1. Overview
2. Research Programs
3. Education Programs
3. Preservation and Access/Challenge Grants
4. Public Programs
5. Federal/State Partnership
6. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Ms. Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Laura S. Nelson,

Advisory Committee, Management Officer.

[FR Doc. 00–5725 Filed 3–8–00; 8:45 am]

BILLING CODE 7536–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: 2:30 p.m., Tuesday, March 14, 2000.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW, Suite 800, Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, (202) 220–2372.

AGENDA:

I. Call to Order
II. Approval of Minutes: December 6, 1999, Regular Meeting
III. Audit Committee Report: January 19, 2000, Meeting
IV. Treasurer's Report
V. Executive Director's Quarterly Management Report
VI. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 00–5860 Filed 3–6–00; 4:58 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company and MidAmerican Energy Company Quad Cities Nuclear Power Station, Units 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License

Nos. DPR–29 and DPR–30 for Quad Cities Nuclear Power Station, Units 1 and 2, to the extent held by Commonwealth Edison Company (ComEd). ComEd currently owns 75 percent of Quad Cities and is the licensed operator of both stations. The remaining interest in Quad Cities is owned by MidAmerican Energy Company (MidAmerican). The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of ComEd) and PECO Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The facility is located in Rock Island County, Illinois.

According to an application for approval filed by ComEd, GENCO would become the owner of ComEd's ownership interest in the units following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation and maintenance of Quad Cities. GENCO and MidAmerican would be responsible for the decommissioning costs of Quad Cities in accordance with their respective ownership percentages, with GENCO being responsible for the eventual performance of decommissioning activities. No physical changes to the facility or operational changes are being proposed in the application. The proposed transfer does not involve any change with respect to the non-operating ownership interest held by Mid-American.

The proposed amendments would replace references to ComEd in the licenses with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000 any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000 persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, as supplemented January 14, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5736 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–10, 50–237 and 50–249]

Commonwealth Edison Company Dresden Nuclear Power Station, Units 1, 2 and 3; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. DPR–2, DPR–19 and DPR–25 for

Dresden Nuclear Power Station, Units 1, 2 and 3, currently held by Commonwealth Edison Company (ComEd), as the owner and licensed operator. The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of ComEd) and PECO Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The facility is located in Grundy County, Illinois.

According to an application for approval filed by ComEd, GENCO would assume ownership of the facility following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of Dresden. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendments would replace references to ComEd in the license with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000 any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicant may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000 persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, as supplemented January 14, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

Lawrence W. Rossbach,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5738 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–454 and 50–455]

Commonwealth Edison Company, Byron Station, Units 1 and 2, Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. NPF–37 and NPF–66 for Byron Station, Units 1 and 2, currently held by Commonwealth Edison Company (ComEd), as the owner and licensed operator. The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of ComEd) and PECO Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The facility is located in Ogle County, Illinois.

According to an application for approval filed by ComEd, GENCO

would assume ownership of the facility following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of Byron. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendments would replace references to ComEd in the license with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings as required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000 any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicant may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the consideration contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000 persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, as supplemented January 14, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http:www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Sr. Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 00–5739 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN50–456 and STN 50–457]

Commonwealth Edison Company, Braidwood Station, Units 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. NPF–72 and NPF–77 for Braidwood Station, Units 1 and 2, currently held by Commonwealth Edison Company (ComEd), as the owner and licensed operator. The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of ComEd) and PECO Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. Braidwood is located in Will County, Illinois.

According to an application for approval filed by ComEd, GENCO would assume ownership of the facility following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of Braidwood. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendments would replace references to ComEd in the license with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly,

through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000 any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicant may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Application,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000 persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, as supplemented January 14, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Sr. Project Manager, Section 2 Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5740 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Company LaSalle County Station, Units 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. NPF–11 and NPF–18 for LaSalle County Station, Units 1 and 2, currently held by Commonwealth Edison Company (ComEd), as the owner and licensed operator. The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of ComEd) and PECO Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The facility is located in LaSalle County, Illinois.

According to an application for approval filed by ComEd, GENCO would assume ownership of the facility following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of LaSalle. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendments would replace references to ComEd in the license with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of

1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000 any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicant may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, as supplemented January 14, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L. Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http:www.nrc.gov).*

Dated at Rockville, Maryland this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

Donna M. Skay,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5742 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company Zion Nuclear Power Station, Units 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. DPR–39 and DPR–48 for Zion Nuclear Power Station, Units 1 and 2, currently held by Commonwealth Edison Company (ComEd), as the owner and licensed operator. The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of ComEd) and PECO Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The facility is located in Lake County, Illinois.

According to an application for approval filed by ComEd, GENCO would assume ownership of the facility following approval of the proposed transfer of the licenses, and would become exclusively responsible for the decommissioning of both Zion units, which have ceased operations. No physical changes to the facility or changes to decommissioning activities are being proposed in the application.

The proposed amendments would replace references to ComEd in the licenses with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, not

withstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By April 29, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicants may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon; Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, and supplement dated January 14, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

Dino C. Scaletti,

Senior Project Manager, Decommissioning Section, Project Directorate IV and Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5743 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353]

PECO Energy Company Limerick Generating Station, Units 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. NPF–39 and NPF–85 for Limerick Generating Station, Units 1 and 2 (Limerick Units 1 and 2). PECO Energy Company (PECO) is currently the owner and the licensed operator of Limerick Units 1 and 2. The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of Commonwealth Edison Company) and PECO. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The facility is located in Montgomery County, Pennsylvania.

According to an application for approval filed by PECO, GENCO would assume ownership of the facility following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of Limerick Units 1 and 2. No physical changes to the facilities or operational changes are being proposed in the application.

The proposed amendments would replace references to PECO in the licenses with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer of the licenses.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to

intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon; J.W. Durham, Sr., Esquire, Sr. V.P. & General Counsel, PECO Energy Company, 2301 Market Street, S26–1, Philadelphia, PA 19101 (phone 215–841–4250, fax 215–841–4282 or e-mail JDURHAM@PECO—Energy.COM); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, as supplemented January 3, and February 14, 2000, filed by PECO, and the supplement dated January 14, 2000, filed by Commonwealth Edison Company, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Website (http://www.nrc.gov).

Dated at Rockville, Maryland, this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5735 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–171, 50–277 and 50–278]

Peco Energy Company; Peach Bottom Atomic Power Station, Units 1, 2, and 3; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. DPR–12, DPR–44, and DPR–56 for Peach Bottom Atomic Power Station, Units 1, 2 and 3 (Peach Bottom Units 1, 2, and 3), to the extent held by PECO Energy Company (PECO). PECO is currently the sole owner of Peach Bottom Unit 1, holds a 42.49 percent ownership interest in Peach Bottom Units 2 and 3, and is the licensed operator of all three Peach Bottom units. The remaining interests in Peach Bottom Units 2 and 3 are owned by Public Service Electric and Gas Company (PSE&G), Delmarva Power & Light Company (DP&L), and Atlantic City Electric Company (ACE). The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of Commonwealth Edison Company) and PECO. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The facility is located in York County, Pennsylvania.

According to an application for approval filed by PECO, GENCO would become the owner of PECO's ownership interest in each of the units following approval of the proposed transfer of the licenses, and would become exclusively responsible for the operation, maintenance, and eventual decommissioning of Peach Bottom Units 1, 2, and 3. No physical changes to the facilities or operational changes are being proposed in the application. The proposed transfer does not involve any change with respect to the non-operating ownership interests held by PSE&G, DP&L and ACE.

The proposed amendments would replace references to PECO in the licenses with references to GENCO and make other changes for administrative purposes to reflect the proposed license transfers.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provide in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000, any person whose interest may be affected by the Commission's action on the application

may request a hearing, and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request for petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon J.W. Durham, Sr., Esquire, Sr. V.P. & General Counsel, PECO Energy Company, 2301 Market Street, S26–1, Philadelphia, PA 19101 (phone 215–841–4250, fax 215–841–4282 or e-mail JDURHAM@PECO-Energy.COM); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 10, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 20, 1999, as supplemented January 3, and February 14, 2000, filed by PECO, and the supplement dated January 14, 2000, filed by Commonwealth Edison Company, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Website (http://www.nrc.gov).

Dated at Rockville, Maryland, this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5737 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

Peco Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56 issued to PECO Energy Company (the licensee) for operation of the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, located in York County, Pennsylvania.

The proposed amendment would add a note to the Completion Time of Condition A for Technical Specification (TS) 3.7.2, ''Emergency Service Water (ESW) System and Normal Heat Sink.'' This note would provide a one-time extension to the completion time (allowed outage time) from 7 to 14 days for one ESW subsystem inoperable.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change adds a note to the Completion Time of Condition A for Technical Specification 3.7.2 (''Emergency Service Water (ESW) System and Normal Heat Sink''). This note extends the completion time for the Condition of one Emergency Service Water (ESW) subsystem inoperable from 7 to 14 days. This note, which will expire on May 31, 2000, allows the replacement of the ESW pump currently scheduled to occur in May 2000. The ESW system is not an input into the probability of occurrence of any of the accidents previously evaluated in the SAR [Safety Analysis Report]. Since accident initiation is not dependent on the operability of either ESW subsystem, changing the maximum allowable time which an ESW subsystem can be inoperable does not involve a significant increase in the probability of an accident previously evaluated.

The ESW system is used to mitigate the consequences of accidents as discussed in the PBAPS, Units 2 and 3, UFSAR [Updated Final Safety Analysis Report], Section 14.6. With the ''B'' subsystem inoperable, the other subsystem is capable of providing the heat removal function with the ''A'' ESW pump. In addition, the Emergency Cooling Water pump can provide this function. However, removal of the ''B'' ESW pump from service would reduce system redundancy. As a result of the loss of redundancy, the Core Damage Probability (CDP) will increase slightly. A comparison to the risk criteria provided in Regulatory Guide 1.174 (''An Approach For Using Probabilistic Risk Assessment In Risk-Informed Decisions On Plant-Specific Changes To The Current Licensing Basis'') and Regulatory Guide 1.177 (''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications'') was performed to benchmark the significance of the temporary ESW pump maintenance configuration. This comparison reveals that the change in calculated core damage frequency (CDF) over the 14 day outage time represents a small fraction of the risk considered as the threshold for risk significance. The calculated CDP, the CDF increase multiplied by the fraction of the year this configuration will exist (14 days), is only 7% of the 5E–7 CDP risk significance threshold cited in RG 1.177 for Unit 2, and 3% for Unit 3 for single allowed out-of-service time Technical Specification changes.

These small fractions demonstrate that the risk incurred during the ''B'' ESW pump outage is not risk significant.

The 100% capacity Emergency Cooling Water (ECW) pump will function as an additional barrier along with the remaining ESW subsystem. However, this additional barrier is not required to ensure the CDP remains below the risk significance threshold cited in RG 1.177. The ECW pump is capable of providing the heat removal function that ESW normally provides during the additional seven (7) day period which is being requested for pump maintenance activities.

The ECW pump receives an automatic start signal coincident with the ESW pumps. The ECW pump is seismically qualified and is powered from a safety-related power source. The safety-related power source used to power the ECW pump is different than the safety-related power source used to power the remaining ESW subsystem. The ECW pump is not safety-related. However, during the replacement of the ''B'' ESW pump, appropriate actions will be in place to ensure that no planned activities will effect the operability of the remaining ESW subsystem including all support systems associated with the remaining ESW pump, and the ECW pump.

Based on the above, extending the completion time from 7 days to 14 days, when one ESW subsystem is inoperable, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The ESW system is not an accident initiator, nor is any new failure mode introduced by an extension of the completion time from 7 days to 14 days, for the Condition of one ESW subsystem inoperable. This change only affects the single failure capability of the ESW system in that only the ''A'' ESW system pump will be operable. During this seven (7) day extension, the ECW pump is planned to be maintained available to serve as a backup to the ''A'' ESW pump. The design basis heat removal capability of this equipment is not being reduced during this seven (7) day period, since one subsystem of ESW (or the ECW pump) is capable of meeting the heat removal requirement in the unlikely possibility of the LOCA [loss-of-coolant accident] coincident with a loss-of-offsite power. Additionally, the method of operation of equipment which utilizes ESW for cooling is not being changed. The length of time that PBAPS, Unit 2 and 3 can operate in Modes 1, 2 and 3 with one ESW subsystem inoperable, does not create a different type accident than any previously evaluated. Changing the length of time with one ESW subsystem inoperable does not create any new failure modes or change any evaluated failure modes. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

This change will not involve a significant reduction in a margin of safety. This change only affects the single failure capability of the ESW system in that only the ''A'' ESW system pump will be operable. The design basis heat removal capability of this equipment is not being reduced during this seven (7) day period, since one subsystem of ESW (or the ECW pump) is capable of meeting the heat removal requirement in the unlikely possibility of the LOCA coincident with a loss-of-offsite power. Additionally, the method of operation of equipment which utilize ESW for cooling is not being changed.

With adequate heat removal capability, the equipment necessary to function following a design basis accident will be able to perform their required mitigating functions. Therefore, this change does not involve a significant reduction in a margin of safety.

As a result of the loss of redundancy, the Core Damage Probability (CDP) does increase slightly. The calculated CDP, the CDF increase multiplied by the fraction of the year this configuration will exist (14 days), is only 7% of the 5E–7 CDP risk significance threshold cited in RG [Regulatory Guide] 1.177 for Unit 2, and 3% for Unit 3. These small fractions demonstrate that the risk incurred during the ''B'' ESW pump outage is not significant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 10, 2000 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in

proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 29, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 3rd day of March 2000.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5747 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company Salem Generating Station, Unit Nos. 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses DPR–70 for Salem Nuclear Generating Station, Unit No. 1, and DPR–75 for Salem Nuclear Generating Station, Unit No. 2, to the extent held by PECO Energy Corporation (PECO). PECO holds a 42.59-percent ownership interest in both Salem units, which are operated by Public Service Electric and Gas Company (PSE&G). The remaining interests in Salem, Unit Nos. 1 and 2, are owned by Delmarva Power & Light Company and Atlanta City Electric Company. The transfer would be to a new generating company, currently referred to as GENCO. GENCO will be a subsidiary of a new holding company, Exelon Corporation, which will be formed as a result of a merger of Unicom Corporation (the parent company of Commonwealth Edison Company) and PECO. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer.

According to the application for approval filed by PECO, GENCO would become the owner of PECO's ownership interests in each of the Salem units following approval of the proposed transfer of the licenses. After this transfer, PSE&G would continue to be exclusively responsible for the operation, maintenance, and eventual decommissioning of Salem Nuclear Generating Station. No physical changes to the facilities or operational changes are being proposed in the application. The proposed transfer does not involve any change with respect to the non-operating ownership interests held by Delmarva Power & Light and Atlantic City Electric Company, or the ownership interest of PSE&G.

The proposed amendments would replace references to PECO in the licenses with references to GENCO and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 50,80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does not conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 29, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rulels of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and

Procedures for Hearings on License Transfer Applications, ''of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: the counsel for PSE&G, Jeffrie J. Keenan, Esquire, Public Service Electric and Gas Company, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038 (tel: 856–339–5429, fax: 856–339–1234, and e-mail: jeffrie.keenan@pseg.com); the counsel for PECO, William E. Baer, Jr., Esquire, Morgan, Lewis and Bockius LLP, 1800 M Street, NW., Washington, DC 20036–5869 (tel: 202–467–7454, e-mail: webaer@mlb.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: ogclt@nrc.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be publishing in the **Federal Register** and served on the parties to the hearing.

As an alternative to request for hearing and petitions to intervene, by April 10, 2000, persons may submit written comments regarding the license transfer application, as provided for in CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and shoudl cite the publication date and page number of this **Federal Register notice.**

For further details with respect to this action, see the application dated December 20, 1999, and supplement from ComEd dated January 14, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 3rd day of March 2000.

For the nuclear Regulatory Commission.

William Gleaves,

Project Manager Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5741 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Florida Power Corporation, et al.

[Docket No. 50–302]

Crystal River Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the requirements of 10 CFR 70.51(d) for Facility Operating License No. DPR–72 issued to Florida Power Corporation, et. al. (FPC or the licensee), for operation of Crystal River Unit 3, located in Citrus County, Florida.

Environmental Assessment

Identification of the Proposed action

The proposed action would exempt the licensee from the requirement to perform a physical inventory of the fuel in the Crystal River Unit 3 spent fuel pool (SFP) every 12 months. Instead of this requirement, the licensee will perform a physical inventory of the fuel in the SFP within 90 days of removing missile shields covering the SFP, if a physical inventory had not been performed within the previous 12 months.

The proposed action is in accordance with the licensee's application for exemption dated July 14, 1999.

The Need for the Proposed Action

The underlying purpose of the annual physical inventory required by 10 CFR 70.51(d) is to verify that the material control and accounting procedures are sufficient to enable the licensee to account for the special nuclear material in the licensee's possession. When missile shields are in place on the SFP, movement of fuel in the SFP is not possible. Therefore, removing the missile shields for the sole purpose of conducting an annual inventory is an unnecessary burden on the licensee.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that it is administrative only and will have no environmental impact.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Crystal River Unit 3.

Agencies and Persons Consulted

In accordance with its stated policy, on February 15, 2000, the staff consulted with William Passetti, Chief, Department of Health, Bureau of Radiation Control, for the state of Florida, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an

environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 14, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 2nd day of March 2000.

For the Nuclear Regulatory Commission.

L.A. Wiens,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5744 Filed 3–9–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8698]

Plateau Resources Limited

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final Finding of No Significant Impact; Notice of Opportunity for Hearing.

SUMMARY: Plateau Resources Limited (PRL) requested that the U.S. Nuclear Regulatory Commission (NRC) amend NRC Source Material License SUA–1371, to approve the Reclamation Plan, as amended, for the Shootaring Canyon Uranium Mill near Ticaboo, Utah. An Environmental Assessment (EA) was performed by the NRC staff in accordance with the requirements of 10 CFR Part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Weller, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J8, Washington, D.C. 20555. Telephone (301) 415–7287.

SUPPLEMENTARY INFORMATION:

Background

Materials License SUA–1371 was originally issued by NRC on September 21, 1979, pursuant to Title 10, Code of Federal Regulations (10 CFR), Part 40, ''Domestic Licensing of Source Material.'' The Shootaring Canyon site is licensed by the NRC under Materials License SUA–1371 to possess byproduct material in the form of uranium waste tailings and other uranium byproduct waste generated by the licensee's milling operations. The mill is currently in standby status, however, the licensee has requested that the license be amended. The license amendment would approve PRL's reclamation plan (RP). The proposed action is needed to minimize exposure to contaminated materials, once the mill operations have ceased, by reclaiming contaminated areas and stabilizing wastes. The goal of the RP is to permanently isolate and stabilize the tailings and associated contamination by minimizing disturbances by natural forces, and to do so without ongoing maintenance. The design objective is for stabilization to be effective for up to one thousand years, to the extent reasonable, and, in any case for at least 200 years, to provide reasonable assurance that releases of radon–222 from the residual radioactive material will be less than 20 pCi/m^2/s (averaged over the entire impoundment), and to provide reasonable assurances to protect groundwater resources.

The facilities to be reclaimed include the following:

1. Mill buildings and equipment.
2. Tailings disposal area.
3. On-site contaminated areas.
4. Off-site contaminated areas (i.e., potential areas affected by windblown tailings).

The decommissioning and reclamation of the above facilities will include the following:

1. Remove mill structures and re-grade disturbed areas to blend with the surroundings. Radioactive waste and contaminated soils and concrete will be disposed of in the tailings impoundment.
2. Cover and stabilize the tailings impoundment area.
3. Replace stockpiled topsoil in selected areas for plant growth.
4. Re-vegetate disturbed areas using native and introduced species.

The RP further describes the designs, activities, schedule, and estimated costs for reclaiming PRL's Shootaring Canyon Uranium Mill site and tailings impoundment, for bonding and surety coverage requirements. The actual final reclamation design and cost analyses will depend on the quantity and depth of the tailings actually placed in the impoundment area and the surface area that they occupy. All conditions and commitments in the RP are subject to NRC inspection. Violation of the RP may result in enforcement action.

PRL submitted the RP in a letter dated January 10, 1997, and the RP was subsequently amended by letters of July 10, and December 17, 1997, and January 14, February 20, and September 3, 1998.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the RP for the Shootaring Canyon Uranium Mill, in accordance with 10 CFR Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' In conducting its appraisal, the NRC staff considered the following: (1) information contained in the previous environmental evaluations of the Shootaring Canyon project; (2) information contained in PRL's RP; (3) environmental monitoring reports; and (4) information derived from NRC staff site visits and inspections of the Shootaring Canyon Uranium Mill site and from communications with PRL, the State of Utah Department of Environmental Quality, the U.S. Bureau of Land Management Henry Mountain Field Station, the U.S. National Park Service Glen Canyon National Recreation Area, the U.S. Fish and Wildlife Service, and the State of Utah Historic Preservation Officer. The results of the staff's appraisal are documented in an Environmental Assessment placed in the licensee's docket file. Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

Conclusions

The NRC staff has examined the actual and potential environmental impacts associated with the RP and has determined that the action is: (1) consistent with requirements of 10 CFR part 40; and (2) will not have long-term detrimental impacts on the environment. The following statements support the FONSI and summarize the conclusions resulting from the staff's environmental assessment:

1. An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to determine if applicable regulatory limits are exceeded. Radiological effluents from site operations have been and are expected to continue to remain below the regulatory limits.
2. Potential risks from the reclamation were assessed. Given the remote location, the small area of impact, and the past activities on the site, the staff has determined that the risk factors for health and environmental hazards are insignificant.

Alternatives to the Proposed Action

The proposed action that the NRC is considering is approval of PRL's RP and the amendment to a source material license issued pursuant to 10 CFR Part 40. The principal alternatives available to the NRC are:

1. Approve the license amendment request as submitted; or
2. Amend the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or
3. Deny the request.

The NRC staff has concluded that there are no significant environmental impacts associated with the proposed action. Therefore, alternatives with equal or greater impacts need not be evaluated. The staff considers that Alternative 2 is the appropriate alternative for selection as the staff anticipates that some needed license conditions will likely result from the staff's safety review of the RP. A technical evaluation report (TER) will be completed with respect to the criteria for reclamation, specified in 10 CFR part 40, Appendix A, and the proposed license conditions will be discussed in the TER.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed RP for NRC Source Material License SUA–1371. On the basis of this assessment, the NRC staff has concluded that the environmental impact that may result for the proposed action would not be significant, and, therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, D.C. 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings,'' of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of the **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Rulemaking and Adjudications Staff.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Plateau Resources Limited, 877 North 8th West, Riverton, Wyoming, 82501;

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington D.C. 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding:

(2) How that interest may be affected by the results of the proceedings, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's area of concern about the licensing activity that is the subject matter of the proceedings; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings'' in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 2nd day of March 2000.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Acting Chief Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–5746 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NRC Workshop on Environmentally Assisted Cracking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The NRC Office of Nuclear Regulatory Research (RES) conducts contract research in many technical areas to support NRC activities in nuclear reactor regulation. The Materials Engineering Branch of RES conducts a significant research effort on evaluation of environmentally assisted cracking (EAC) in light water reactor (LWR) systems and components. In FY2000, a significant extension of this program is being planned to provide NRC with confirmatory research which will be required to deal with a variety of issues for operating reactors. The purpose of this workshop is to inform interested stakeholders of NRC research plans and to receive comments and suggestions.

DATES: April 20, 2000, 11 a.m.–5 p.m.

LOCATION: U.S. Nuclear Regulatory Commission Headquarters, Two White Flint North, Room T–10–A1, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

CONTACT: Mike McNeil, Phone: (301) 415–6794, E-mail:mbm@nrc.com.

ATTENDANCE: This meeting is open to the general public.

PROGRAM: The purpose of the meeting is to solicit the views of stakeholders on the proposed NRC research activities in this field. The meeting will start with presentations by NRC staff on past NRC activities in this area, the regulatory pressures leading to the future activities, and the proposed research program. There will then be a period open for questions and discussion. Key NRC and contractor personnel will be in attendance so as to permit, insofar as possible, the on-the-spot resolution of questions.

Dated in Rockville, Maryland this 2nd day of March 2000.

Michael E. Mayfield,

Acting Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 00–5745 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committe on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 118th meeting on March 27–29, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Monday, March 27, 2000—8:30 a.m. until 5 p.m.

A. *8:30 a.m.–10:30 a.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss planned reports on the following topics: the NRC's proposed high-level waste regulation 10 CFR Part 63; a joint letter with the Advisory Committee on Reactor Safeguards on the Defense In-Depth philosophy; the ACNW Year 2000 Action Plan and Self Assessment; and comments on the NRC staff's Strategy for Site Characterization Sufficiency Comments (tentative).

B. *10:45 a.m.–12:15 p.m.: ACNW Planning and Procedures* (Open)—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The ACNW will discuss planned tours and ACNW-related activities of individual members.

C. *1:30 p.m.–3:30 p.m.: Activities of NRC's Spent Fuel Project Office* (Open)—The Committee will hear a review of the activities underway in NRC's Spent Fuel Project Office. Special emphasis will be placed on transportation issues associated with radioactive waste and spent nuclear fuel as well as an update on the modal study. The interrelationship between the Department of Transportation and NRC related to the shipment of radioactive material will be reviewed.

D. *3:45 p.m.–5 p.m.: Continue Preparation of ACNW Reports* (Open)—Continue preparation of ACNW reports noted in item A.

Tuesday, March 28, 2000–8:30 a.m. until 5 p.m.

E. *8:30 a.m.–10 a.m.: NRC Strategy for Site Sufficiency* (Open)—The ACNW will review the NRC staff's plans for the development of a strategy to produce site characterization sufficiency comments on the Department of Energy's Yucca Mountain Site Recommendation.

F. *10:15 a.m.–12 Noon: DOE–NRC Technical Exchange* (Open)—The NRC staff will present a summary of a March 14–15, 2000 DOE-NRC technical exchange on the path forward for resolution of Yucca Mountain key technical issues and sub-issues.

G. *1 p.m.—2 p.m.: Yucca Mountain Review Plan* (Open)—The NRC staff will present a periodic briefing on the development of a Yucca Mountain Review Plan. Emphasis will be on the post-closure sections of the plan.

H. *2 p.m.–3 p.m.: Radionuclide Content of Slag* (Open)—The ACNW will review a project by NRC's Office of Nuclear Regulatory Research on the radioactive content of slag which is produced as byproduct of the manufacture of metals.

I. *3 p.m.–5 p.m.: Continue Preparation of ACNW Reports* (Open)—Continue preparation of ACNW reports noted in item A.

Wednesday, March 29, 2000—8:30 a.m. until 3 p.m.

J. *8:30 a.m.–9:30 a.m.: Meeting with the Director of the Division of Waste Management, Office of Nuclear Material Safety and Safeguards* (Open)—The Committee will meet with the Director to discuss items of mutual interest.

K. *9:30 a.m.–2:00 p.m.: Complete ACNW Reports* (Open)—Complete preparation of ACNW reports noted in item A.

L. *2:00 p.m.–3:00 p.m.: Miscellaneous* (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52352). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Richard K. Major, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Richard K. Major, ACNW (Telephone 301/415–7366), between 8 a.m. and 5 p.m. EST. ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: March 3, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–5748 Filed 3–8–00; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

[OMB NUMBER: 0420–0001]

AGENCY: Peace Corps.

ACTION: Notice of public use of form review request to the Office of Management and Budget

SUMMARY: The Associate Director of Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request seeking Emergency Clearance from the Office of Management and Budget to approve the reinstatement of the

National Agency Check Questionnaire for Peace Corps Volunteer Background Investigation [OMB Number 0420–0001]. The Agency will also seek an expiration date starting after the 90 day Emergency Clearance and ending three years from that approval date. Section 22 of the Peace Corps Act (22 U.S.C. 2501 et seq.) mandates that ''all persons employed or assigned to duties under the Act shall be investigated to ensure employment or assignment is consistent with national interest in accordance with standards and procedures established by the President.''

DATES: The Peace Corps invites comments until May 8, 2000.

ADDRESSES: A copy of the information collection may be obtained from Paul Davis, Manager Placement Unit, Peace Corps, 1111 20th Street NW, Washington, DC 20526. Mr. Davis may be contacted by telephone at (202) 692–1836. Comments on these forms should be addressed to Mr. David Rostker, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20523.

Dated: February 29, 2000.

Michael J. Kole,

Director of Administrative Services and Certifying Official.

[FR Doc. 00–5715 Filed 3–8–00; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27144]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 1, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 23, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 23, 2000, the applicant(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities (70–9563)

Notice of Proposal to Amend Declaration of Trust; Order Authorizing Solicitation of Proxies

Northeast Utilities (''NU''), a registered holding company, located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, has filed a declaration under sections 6(a)(2), 7(e) and 12(e) of the Public Utility Holding Company Act of 1935, as amended (''Act''), and rules 62(d) and 65 under the Act.

NU has entered into an Agreement and Plan of Merger (''Merger Agreement''), dated October 13, 1999, amended and restated January 11, 2000, with Consolidated Edison, Inc. (''CEI''), a New York electric and gas public utility holding company exempt from registration under section 3(a)(1) of the Act under rule 2, Consolidated Edison, Inc. (''New CEI''),[1] a Delaware corporation and a wholly owned subsidiary of CEI, and N Acquisition LLC (''N Acquisition''), a Massachusetts limited liability company, which is directly and indirectly owned by New CEI. Under the Merger Agreement, CEI will be merged with and into New CEI, with New CEI as the surviving corporation, and N Acquisition will be merged with and into NU, with NU as the surviving entity (''Merger''). On January 20, 2000, NU and CEI filed a separate application-declaration (file no. 70–9613) with this Commission requesting authority to consummate the Merger.

NU proposes to make certain amendments (''Amendments'') to its Declaration of Trust (''Trust Agreement''). The Amendment would specifically authorize NU to consummate a merger with one or more domestic limited liability companies under Massachusetts law.[2] The Amendments would also allow the number of trustees resulting from the merger to be fixed by the agreement providing for the merger.

NU also proposes to solicit proxies from its common shareholders for the purposes of obtaining required shareholder approvals related to the merger. Specifically, NU proposes to solicit proxies from its common shareholders to approve the Amendments and the Merger Agreement at a special meeting, which is expected to be held in the spring of 2000.

The proposed Amendments, which will be effected regardless of whether the Merger is consummated, and the Merger Agreement must be approved by an affirmative vote of two-thirds of all NU shareholders eligible to vote. The Amendments and the Merger have already been approved by the unanimous vote of the NU board of trustees.

NU requests that an order authorizing the solicitation of proxies be issued as soon as practicable under rule 62(d). It appears to the Commission that NU's declaration regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

Fees, commissions, and expenses to be incurred in connection with the transactions described in the declaration are expected not to exceed $500,000. NU states that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

It is ordered, under rule 62 under the Act, that the declaration regarding the proposed solicitation of proxies can become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5645 Filed 3–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission

[1] New CEI was originally incorporated as CWB Holdings, Inc.

[2] The Trust Agreement already authorizes the NU board of trustees to sell, lease or otherwise dispose of any part or parts of the properties of NU to the extent permitted by law. Under Massachusetts law, however, for a business trust to merge with another entity, its declaration of trust must explicitly authorize such a transaction. The Trust Agreement currently does not authorize NU to merge with another entity.

will hold the following meetings during the week of March 13, 2000.

An open meeting will be held on Wednesday, March 15, 2000 at 10:00 a.m. in Room 600. A closed meeting will be held on Thursday, March 16, 2000 at 11:00 a.m.

The subject matter of the open meeting scheduled for Wednesday, March 15, 2000 is:

Consideration of whether to propose amendments to Form N–1A under the Investment Company Act of 1940 and the Securities Act of 1933, Rule 482 under the Securities Act of 1933, and Rule 34b–1 under the Investment Company Act of 1940. The amendments would improve disclosure to investors of the effect of taxes on the performance of open-end management investment companies (''mutual funds'' or ''funds''). Under the proposed amendments, mutual funds would be required to disclose standardized after-tax returns in the risk/return summary of the prospectus and in Management's Discussion of Fund Performance, which is typically located in the annual report. The proposal also would require funds that chose to include after-tax returns in advertisements and other sales materials to include standardized after-tax returns. For further information, contact Maura S. McNulty, Division of Investment Management, at (202) 942–0721.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matters of the closed meeting scheduled for Thursday, March 16, 2000 are:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

A litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

Dated: March 7, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5909 Filed 3–7–00; 12:37 p.m.]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42493; File No. SR–OPRA–00–03]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Temporary Capacity Allocation Plan

March 3, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 3, 2000, the Options Price Reporting Authority (''OPRA'')[2] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''Plan''). The amendment proposes to allocate the message handling capacity of OPRA's processor among the participant exchanges for a temporary period ending May 13, 2000, to minimize the likelihood that during this period the total number of messages generated by the participants will exceed the processor's (*i.e.,* Securities Industry Automation Corporation) aggregate message handling capacity.[3] The Commission is publishing this notice and order to solicit comments from interested persons on the proposed Plan amendment, and to grant accelerated approval to the proposed Plan amendment through May 13, 2000.

I. Description and Purpose of the Amendment

As discussed above, OPRA proposes to allocate the message handling capacity of its processor among the participant exchanges for a temporary period ending May 13, 2000, to minimize the likelihood that during this period the total number of messages generated by the participants will exceed the processor's aggregate message handling capacity. During this period, the processor's aggregate message-handling capacity, which is estimated by the processor to be 3,540 messages per second, will be allocated among the participants by automatically limiting the number of messages that each participant may input to the processor as follows:

American Stock Exchange: 1,024 messages per second

Chicago Board Options Exchange: 1,366 messages per second

Pacific Exchange: 635 messages per second

Philadelphia Stock Exchange: 515 messages per second

OPRA proposes to allocate the message handling capacity of its processor in response to significant increases in the number of options quotations that have recently been experienced by all of the participant exchanges as a result of the greater number of options series being traded on the exchanges and the heightened volatility in the underlying securities. Although the aggregate amount of options market information messages is generally still within the capacity of the OPRA processor, the aggregate options message traffic is now so close to reaching the processor's maximum message-handling capacity that some short-term solution to the problem is necessary to avoid risking unacceptable delays and queuing in the dissemination of real-time options market information. Although some long-term solutions have been proposed in the course of the Options Capacity Planning and Quote Mitigation Program that has been taking place over the past several months, these may not be in place soon enough to deal with the current expansion of message traffic.[4] For this reason, beginning in January 2000, OPRA's

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[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges that agreed to the OPRA Plan are the American Stock Exchange (''AMEX''); the Chicago Board Options Exchange (''CBOE''); the New York Stock Exchange (''NYSE''); the Pacific Exchange (''PCX''); and the Philadelphia Stock Exchange (''PHLX'').

[3] OPRA has determined to treat this proposed capacity allocation as an amendment to its national market system plan and, accordingly, to file the proposed capacity allocation for Commission review and approval pursuant to paragraph (b) of Rule 11Aa3–2. Any determination made by OPRA to continue the effectiveness of the proposed capacity allocations or any revised capacity allocations beyond May 13, 2000 will be the subject of a separate filing under the same Rule.

[4] *See* Securities Exchange Act Release No. 41843 (September 8, 1999) in which the Commission issued an order authorizing the options exchanges, OPRA, OPRA's processor and other parties to act jointly in planning, developing and discussing approaches and strategies with respect to options quote message traffic and related matters (''September 1999 Order'').

participant exchanges have agreed to allocate the assumed maximum processor capacity among themselves. The agreed-upon capacity allocations have been filed and approved under Exchange Act Rule 11Aa3–2 as amendments to the OPRA Plan.[5]

OPRA's processor now estimates that the capacity allocation may prudently be adjusted upwards to reflect an assumed maximum processor capacity of 3,540[6] messages per second. Accordingly, OPRA's participant exchanges, in the presence of Commission staff pursuant to the September 1999 Order, have agreed to the allocation that is proposed in this filing to be effective through May 13, 2000. Because this allocation is based upon an assumed maximum processor capacity of 3,450 messages per second, which the processor advises is a realistic number, it should serve the intended purpose of avoiding delays and queues in OPRA's real-time stream of market information.

To retain sufficient flexibility to deal with the changed circumstances within and among the options markets, including the planned commencement of options trading by the International Securities Exchange, the proposed allocations will remain in effect only until May 13, 2000, unless OPRA or the Commission decides that the proposed allocation or some revised allocation should be continued beyond that date.[7]

II. Implementation of the Plan Amendment

OPRA believes the temporary implementation of the proposed capacity allocation program is essential to avoid delays and queues in the dissemination of options market information, which in turn is necessary to achieve the objective of Section 11A(a)(1)(C)(iii),[8] including to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Accordingly, OPRA requests the Commission to permit the proposed allocation program to be put into effect summarily upon publication of notice of this filing, on a temporary basis, pursuant to paragraph (c)(4) of Rule 11Aa3–2,[9] based on a finding by the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or is otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to file number SR–OPRA–00–03 and should submitted by March 30, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Plan Amendment

After careful review, the Commission finds that the proposed Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[10] Specifically, the Commission believes that the proposed amendment, which allocates the limited capacity of the OPRA system among the options markets, is consistent with Rule 11Aa3–2 in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system. The Commission notes that the aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit of OPRA's systems capacity. OPRA's processor has informed the Commission that current plans to enhance OPRA's systems are not expected to be completed before the end of the second quarter of this year, at the earliest. Consequently, the Commission is concerned that, absent an agreed-to program to allocate systems capacity among the options markets that is put in place immediately, systems queuing of the options quotes may be the norm, to the detriment of all investors and othehr participants in the options markets. The Commission believes that the agreed-upon allocation proposal is a reasonable means for addressing potential strains on capacity that may occur between now and May 13, 2000.

The Commission finds good cause to accelerate the proposed Plan amendment prior to the thirtieth day after the date of publication in the **Federal Register.** The Commission notes that the proposed Plan amendment is intended to allocate OPRA system capacity for a short period of time to mitigate potential disruption to the orderly dissemination of options market information caused by the inability of the OPRA system to handle the anticipated quote message traffic. The Commission believes that approving the proposed capacity allocation will provide the options exchanges and OPRA with an immediate, short-term solution to a pressing problem, while giving the Commission and the options markets additional time to evaluate and possibly, implement, other quote mitigation strategies. In addition, the limited time frame of the applicability of the capacity allocation program should provide the Commission and the options exchanges with greater flexibility to modify the program, as necessary, to ensure the fairness of the allocation process to all of the options markets going forward. The Commission finds, therefore, that granting accelerated approval of the proposed Plan amendment is appropriate and consistent with Section 11A of the Act.[11]

V. Conclusion

It Is Therefore Ordered, pursuant to Rule 11Aa3–2 of the Act,[12] that the proposed Plan amendment (SR–OPRA–00–03) is approved on an accelerated basis through May 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

[5] *See* Securities Exchange Act Release Nos. 42328 (January 11, 2000), 65 FR 2988 (January 19, 2000) (File No. SR–OPRA–00–01) and 42362 (January 28, 2000), 65 FR 5919 (February 7, 2000) (File No. SR–OPRA–00–02).

[6] The proposed Plan amendment incorrectly referred to 3,518 messages per second. It has been modified here pursuant to OPRA's verbal request. Telephone conversation between Joseph Corrigan, Executive Director, OPRA, and Deborah Flynn, Special Counsel, Division of Market Regulation, Commission, on March 3, 2000.

[7] Any such continued allocation of OPRA capacity that might be approved by OPRA would be the subject of a separate filing under Rule 11Aa3–2. 17 CFR 240.11Aa3–2. *See* note 3, *supra.*

[8] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[9] 17 CFR 240.11Aa3–2(c)(4).

[10] In approving this proposed Plan amendment, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.c. 78c(f).

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 240.11Aa3–2.

[13] 17 CFR 200.30–3(a)(29).

Dated:

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5757 Filed 3–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42489; File No. SR–AMEX–00–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Trading of Options on Biotech HOLDRs

March 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2000, the American Stock Exchange Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Amex as a ''non-controversial'' rule change under Rule 19b–4(f)(6)[3] under the Act. 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 trade standardized and FLEX equity options on Biotechnology Holding Company Depositary Receipts (''Biotech HOLDRs'' or ''HOLDRs''). The text of the proposed rule change is available at the Office of the Secretary, 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide for the trading of standardized equity options and FLEX[4] equity options on Biotech HOLDRs.[5] Biotech HOLDRs are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the HOLDRs. They are negotiable receipts issued by a trust representing securities of issues that have been deposited and are held on behalf of investors in HOLDRs. Biotech HOLDRs, which trade in round lots of 100, and multiples thereof, may be issued after their initial offering through a deposit of the required number of shares of common stock of the underlying issuers with the trustee. The trust will only issue HOLDRs upon the deposit of the shares of underlying securities that are represented by a round-lot of 100 HOLDRs. Likewise, the trust will cancel, and an investor may obtain, hold, trade or surrender HOLDRs in a round-lot and round lot multiples of 100 HOLDRs. Biotech HOLDRs are currently traded on the Exchange like other equity securities, subject to the Exchange's equity trading rules.

The Exchange believes trading options on Biotech HOLDRs is appropriate because Biotech HOLDRs currently exceed the minimum eligibility criteria for equities set forth in Amex Rule 915, as do each of the underlying securities.[6] Specifically, there are a minimum of 7,000,000 shares of each of the underlying securities owned by persons other than those required to report their security holdings under Section 16(a) of the Act; there are a minimum of 2000 shareholders of each of the underlying securities; trading volume (in all markets in which the underlying securities are traded) has been at least 2,400,000 shares in the preceding twelve months; the market price per share of each of the underlying securities has been at least $7½ for the majority of business days during the three calendar months preceding the date of selection as measured by the lowest closing price reported in any market in which the underlying securities traded on each of the subject days and the issuers are in compliance with any applicable requirements of the Act. The Biotech HOLDRs also satisfy these eligibility criteria.

Options on Biotech HOLDRs will be traded on the Exchange pursuant to the same rules and procedures that apply to trading in options on equity securities. However, the Exchange is also proposing to list FLEX Equity options on Biotech HOLDRs. The Exchange will list option contracts covering 100 HOLDRs, the minimum required round lot trading size for HOLDRs. Strike prices for the contracts will be set to bracket the trust issued receipts at the same intervals that apply to standardized equity options (*i.e.*, 2½ point intervals for underlying equity values up to $25, 5 point intervals for underlying equity values greater than $25 up to $200, and 10 point intervals for underlying equity values greater than $200). The proposed position and exercise limits for options on Biotech HOLDRs will be the same as those established for stock options as set forth in Amex Rule 904 and 905. The Amex anticipates that options on Biotech HOLDRs will initially qualify for a position limit of 13,500 contracts. However, as with standardized equity options, applicable position limits will be increased for options on Biotech HOLDRs if the volume of trading in HOLDRs increases to meet the requirements of a higher limit. As is currently the case for all FLEX Equity options, no position and exercise limits will be applicable to FLEX Equity options overlying the HOLDRs. Options on Biotech HOLDRs will be subject to the listing and maintenance standards set forth in Amex Rule 915 and 916.[7] FLEX options will be subject to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Flex equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[5] The Exchange's proposal to list and trade Trust Issued Receipts (also referred to as HOLDRs) was approved by the Commission on September 21, 1999. *See* Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

[6] The Exchange represents that both the Biotech HOLDRs and the underlying securities meet the options eligibility criteria outlined in Amex Rule 915. Telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, and Heather Traeger, Attorney, Division of Market Regulation (''Division''), SEC, on February 28, 2000.

[7] Amex has filed proposed listing and maintenance standards specifically for the trading of options on Trust Issued Receipts, proposed Commentary .07 under Amex Rule 915 and proposed Commentary .09 under Amex Rule 916. The proposed standards have not yet been noticed in the **Federal Register**, as the Commission and the Exchange are still discussing the proposed rule change. *See* SR–Amex–99–37. If the proposed standards are approved, Biotech HOLDRs will be subject to these specific listing and maintenance standards. Telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, and Heather Traeger, Attorney, Division, SEC, on February 25, 2000.

standards set forth in the Amex 900G rule series.[8]

Should Biotech HOLDRs cease to trade on an exchange or as national market securities in the over-the-counter market, there will be no opening transactions in the options on the HOLDRs, and all such options will trade on a liquidation-only basis (*i.e.,* only closing transactions to permit the closing of outstanding open options positions will be permitted). In addition, the Amex will consider the suspension of opening transactions in any series of options of the class covering Biotech HOLDRs if: (1) The options fail to meet the uniform equity option maintenance standards in Commentary .01 to Amex Rule 916;[9] (2) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Biotech HOLDRs for 30 or more consecutive trading days; (3) there are fewer than 50,000 HOLDRs issued and outstanding; (4) the market value of all Biotech HOLDRs issued and outstanding is less than $1,000,000; or (5) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on Biotech HOLDRs will be physically-settled and will have the American-style exercise feature used on all standardized equity options, and not the European-style feature. The Exchange, however, also proposes to trade FLEX Equity options which will be available with both the American-style and European-style exercise feature, as well as other FLEX Equity features.[10] Lastly, the proposed margin requirements for options on Biotech HOLDRs will be at the same levels that apply to options generally under Amex Rule 462.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[11] of the Act in general and furthers the objectives of Section 6(b)(5)[12] in particular in that 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 Exchange represents that the proposed rule change will impose no 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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder[14] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest.[15] Any any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection for investors, or otherwise in the furtherance of the purposes of the Act.[16]

The Exchange has requested that the rule change be accelerated to become operative immediately upon filing of the proposal, because such proposal contemplates trading options on a product in which both the product and each of the underlying component securities exceeds the minimum eligibility requirements for trading options on equities as set forth in Amex Rule 915. Because both the securities underlying Biotech HOLDRs and Biotech HOLDRs themselves meet the eligibility requirements for trading options on equity securities, and because the Exchange is currently working to establish specific listing and maintenance standards for options on HOLDRs, the Commission finds that accelerating the operative date of the rule change is consistent with the protection of investors and the public interest, and thus designates March 2, 2000 as the operative date of this filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–00–13 and should be submitted by March 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5761 Filed 3–8–00; 8:45 am]

BILLING CODE 8010–01–M

[8] Telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, and Heather Traeger, Attorney, Division, SEC, on February 28, 2000.

[9] Specifically, Commentary .01 to Amex Rule 916 provides that an underlying security will not meet the Exchange's requirements for continued listing when, among other things; (i) There are fewer than 6,300,000 publicly-held shares; (ii) there are fewer than 1,600 holders; (iii) trading volume was less than 1,800,000 shares in the preceding twelve months; and (iv) the share price of the underlying security closed below $5 on a majority of the business days during the preceding 6 months.

[10] An American-style option may be exercised at any time prior to its expiration. A European-style option, however, may be exercised only on its expiration date.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5)

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] Because the Commission and Amex have had ongoing discussions regarding the proposed rule change, the Commission has determined to waive the requirement that Amex provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[16] 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42486; File No. SR–CHX–00–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees

March 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2000, 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 Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. 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 amend its membership dues and fees schedule (the ''Schedule'') to continue, through June 30, 2000, the waiver of all transaction, order processing and floor broker fees for transactions that occur during the CHX's E-Session extended hours trading session. The text of the proposed rule change is available upon request from the CHX and 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 Exchange 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).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(II).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change restates and amends the Schedule to eliminate, through June 30, 2000, order processing, transaction and floor broker fees for transactions that occur during the CHX's E-Session.[4] This proposal is designed to allow CHX members to continue to participate in the E-Session without incurring the fees normally associated with their CHX transactions.[5] According to the Exchange, the vast majority of the securities that trade during the E-Session are already subject to order processing and transaction fee waivers under the current fee schedule because they are either Nasdaq/NMS issues or issues within the S&P 500. Waiving fees on the few remaining securities and on floor broker transactions in all securities simplifies the Exchange's fee-related communications with its members.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[4] On October 13, 1999, the Commission approved, on a pilot basis, the CHX's proposed rule change that allowed the CHX to implement an extended hours trading session. *See* Securities Exchange Act Release No. 42004 (October 13, 1999), 64 FR 56548 (October 20, 1999)(SR–CHX–99–16). The E-Session takes place from 3:30 p.m. to 5:30 p.m. Central Time, Monday through Friday. The E-Sessiion is currently approved to continue through October 1, 2000. *See* Securities Exchange Act Release No. 42463 (February 28, 2000)(SR–CHX–00–02).

[5] E-Session fees have been waived since the beginning of the E-Session. *See* Securities Exchange Act Release No. 42089 (November 2, 1999), 64 FR 60864 (November 8, 1999) (SR–CHX–99–23) (waiving fees from October 13, 1999 through December 31, 1999; *see also* Securities Exchange Act Release No. 42329 (January 11, 2000), 65 FR 3000 (January 19, 2000) (SR–CHX–99–29) (waiving fees from January 1, 2000 through March 1, 2000. This proposal simply extends the waiver of the same fees through June 30, 2000. *See* March 2, 2000 telephone conversation between Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, and Joseph P. Morra, Attorney, Division of Market Regulation, SEC.

[6] 15 U.S.C. 78f(b)(4).

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because it involves a due, fee, or other charge. At any time with 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change 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.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–00–05, and should be submitted by March 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

[FR Doc. 00–5762 Filed 3–8–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42482; File No. SR–DTC–00–03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Establishing a Depository Link With SIS SegaInterSettle AG

March 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 22, 2000, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC proposes to open a free-of-payment omnibus account at SIS SegaInterSettle AG (''SIS''), a Swiss depository.

II. Self-Regulatory Organization's of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) DTC is proposing to establish a depository link with SIS through use of a free-of-payment omnibus account at SIS. The central purpose of the proposed link between SIS and DTC will be to facilitate the efficient processing of cross-border securities transactions between DTC participants and SIS participants.

DTC proposes to open a free-of-payment omnibus account at SIS, creating a one-way DTC–SIS interface. The link would permit, but would not require, DTC positions in issues that are eligible at both DTC and SIS to be held in DTC's account at SIS. The proposed interface will enable DTC participants to effect book-entry transactions with SIS participants. In addition, it is noteworthy that there are a number of major banks and broker-dealers that are participants of both DTC and SIS. The link will enable these dual participants to engage in efficient inventory positioning by moving their security positions from one depository's books to the other in order to meet the dual participants' internal needs.[3]

Establishment of the link will allow DTC (and through it, DTC's participants) to use SIS's custody, book-entry delivery, and other depository services for securities that are eligible in both depositories. The link will enable a DTC participant to settle, on a free-of-payment basis, a cross-border transaction with an SIS counterparty by making a book-entry delivery from DTC's omnibus account at SIS to the SIS participant's account at SIS. Conversely, an SIS participant would be able to settle, on a free-of-payment basis, a cross-border transaction with a DTC participant by making a book-entry delivery from the SIS participant's account at SIS to the DTC omnibus account at SIS (while identifying the DTC participant to which the delivered securities should be credited). The receiving DTC participant could then redeliver the securities on either a free-of-payment or versus-payment basis to any other DTC participant within DTC.

By opening a DTC account at SIS, DTC would enable its participants to substitute efficient book-entry movements for cumbersome physicial movements of securities certificates between SIS and DTC. The link will markedly reduce the significant costs and risks associated with withdrawing physical certificates from one depository and then physically transporting the certificates and ultimately reregistering and redepositing them at the other depository.

SIS will make SIS's depository services (such as income collection, maturity presentments, and reorganization processing) available to DTC in accordance with SIS procedures on securities held in DTC's account at SIS. Whether DTC holds its underlying inventory in Switzerland or in the U.S., DTC services to DTC participants will be the same as are currently provided.

(2) The principal benefits that will attend DTC's opening an omnibus account at SIS are: (i) the accelerated speed of settlement of cross-border transactions in the subject securities; (ii) the elimination of most physical movements of the subject securities between SIS, transfer agents in the U.S. and Switzerland, and DTC; and (iii) a reduction of costs and risks to DTC participants and SIS participants as a result of the above advances. DTC's providing these benefits to participants is in keeping with DTC's objective of providing efficient book-entry clearance and settlement facilities while at the same time reducing risk to DTC participants.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act and the rules and regulations thereunder applicable to DTC because the proposed link will reduce risks and associated costs to DTC participants and SIS participants.[4]

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Today, the ''Swiss'' issues that are DTC-eligible consist of over five dozen issues of depository receipts, debt, and warrants. DTC understands, however, that UBS AG (''UBS'') plans to list UBS registered shares on the New York Stock Exchange at the end of March 2000 and to concurrently have them made eligible in the DTC system.

[4] In establishing an account at a foreign depository such as SIS, DTC performs risk analysis of the foreign depository to assess whether, in the aggregate, the foreign depository has what DTC determines to be an acceptable risk profile. DTC's risk analysis includes, among other things, an evaluation of the foreign depository in the areas of operational control, financial strength, technological capabilities, market reputation and standing, contract and legal protection, regulation, audit arrangements, and subcustody usage. Once an account is established, DTC conducts ongoing monitoring of material events and periodic risk assessments evaluating the same areas as when the account was being established.

as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–00–03 and should be submitted by March 30, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5758 Filed 3–8–00; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42487; File No. SR–NYSE–99–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Amend the Exchange's Allocation Policy

March 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 20, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. On February 7, 2000, the Exchange submitted Amendment No. 1 to its proposal.[2] The proposed rule change, as amended, is described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of changes to the Exchange's Allocation Policy and Procedures (''Policy'').

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 and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The intent of the Exchange's Policy is to (1) ensure that the allocation process for securities is based on fairness and consistency and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) provide an incentive for ongoing enhancement of performance by specialist units; (3) provide the best possible match between a specialist unit and security; and (4) contribute to the strength of the specialist system.

Since 1987, the Exchange's Quality of Markets Committee has appointed a number of Allocation Review Committees (''ARCs'') to review the Policy and make recommendations with respect to changes.[3] In February, 1999, the Quality of Markets Committee again appointed in ARC, ARC V, to review the Policy and make recommendations with respect to improvements in the allocation process. Those recommendations, which the Exchange is proposing as changes to the Policy, are discussed below.

Composition of Allocation Committee

Currently, the Allocation Committee is composed of nine members, consisting of seven floor brokers (including three broker Governors (one of whom may be an independent/two dollar broker) and four other floor brokers from the Allocation Panel (one of whom must be an independent/two dollar broker)) and two allied members[4] from the Market Performance Committee[5] or the Allocation Panel. The Allocation Committee presently does not have representation from institutional investor organizations. The Exchange believes that these organizations are significant participants in the securities markets, including the Exchange and therefore, that such representation enhances the expertise and objectivity of the Allocation Process. The proposal would add one institutional investor representative member to the Allocation Committee drawn from the Allocation Panel or from the institutional investor members of the Market Performance Committee.

In connection with this change, however, the Exchange does not believe it is necessary to expand the size of the Committee. Therefore, the NYSE proposes to decrease the number of floor brokers on the Committee from seven to six. This would be accomplished by decreasing from four to three the number of other floor brokers from the Allocation Panel (one of whom must be an independent/two dollar broker).

Composition of Allocation Panel

The Allocation Panel (''Panel'') is the resource from which the Allocation Committee is assembled. A Panel is appointed by the Exchange's Quality of Markets Committee from among

[1] 5 U.S.C. 78s(b)(1).

[2] In Amendment No. 1, the Exchange provided additional information regarding the allocation of target stocks and merged companies; clarified the selection process for institutional investors and the definition of a senior officer; and revised its procedures so that members of the committee eligible for election as chairman include brokers with four months remaining in their committee term. *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Terri Evans, Attorney, Commission, dated February 4, 2000 (''Amendment No. 1'').

[3] *See* Securities Exchange Act Release No. 38372 (March 7, 1997), 62 FR 13421 (March 20, 1997) (containing recommendations made by ARCs I through IV).

[4] *See* Sec. 3(c) of Art. I of the NYSE Constitution.

[5] The Market Performance Committee is appointed by the Exchange's Board of Directors to develop and administer procedures designed to improve the performance of members on the floor. It consists of floor Directors, floor Governors, allied members and representatives of institutional investor organizations.

individuals nominated by the Exchange's membership. The Panel consists of 28 floor brokers; twelve allied members (including the four allied members serving on the Market Performance Committee); the eight floor broker Governors who are part of the Panel by virtue of their appointment as Governors; and a minimum of five Senior Floor Official brokers. The Exchange proposes three changes to the composition of the Panel.

First, the Exchange proposes to expand the Panel to add nine institutional investor organization representatives, including the five serving on the Market Performance Committee, to be consistent with the proposal to add institutional investor representatives to the Allocation Committee. Representatives from institutional investor organizations will be chosen in the same manner as other Panel members (*i.e.,* through nominations from the membership and appointment by the Quality Markets Committee).[6]

The second proposed change relates to the number of floor Governors on the Panel. Floor Governors are Floor Officials who have been appointed as Governors by the Chairman of the Exchange. In 1998, the Exchange increased the number of floor Governors appointed under Exchange Rule 46 from 16 to 20.[7] These 20 governors consist of ten specialists active on the floor and ten-floor brokers. The floor broker Governors are automatically members of the Market Performance Committee and the Panel. The Exchange now proposes to increase the number of floor broker Governors on the Panel from eight to ten to reflect the increased number of floor Governors. In addition, at the time the number of floor Governors was increased, the number of allied member representatives on the Market Performance Committee was increased from four to five. The Exchange proposes to amend the composition of the Panel to reflect this increase.

The new composition of the Allocation Panel would be 28 floor brokers; 13 allied members (including the five allied members serving on the Market Performance Committee); nine institutional members (including the five representatives of institutional investor organizations serving on the Market Performance Committee); the ten floor broker Governors who are part of the Panel by virtue of their appointment as Governors; and a minimum of five Senior Floor Official brokers.

Allocation Committee Quorum Requirement

The Exchange is not proposing to alter the Committee's existing quorum requirement that there be at least six floor brokers, at least two of whom are Governors, and one allied member. The presence of the institutional representative would not be required for a quorum because, at times, it may be difficult to obtain the participation of a representative of an institutional investor organization.

Contact Between Listing Companies and Specialist Units

Currently, specialist units or any individual acting on their behalf are prohibited from having any contact with a company that has applied for listing from the date applications (known as ''green sheets'') are solicited from specialists for the purpose of allocating the stock to a specialist organization. The Exchange proposes to change this non-contact period to the earlier of the date written notice is given that the listing company filed its listing application with the Exchange or the date allocation applications are solicited, (*i.e.,* the date the ''green sheet'' is posted). The Exchange presently publishes this notice of listing application in its Weekly Bulletin. This proposal would move the start of the period as to when contact is prohibited to an earlier date in those cases where the ''green sheet'' is issued after the Weekly Bulletin notice of an application to list has been published. The Exchange believes this is appropriate since once the application is made public, the listing process has begun, and specialist contact with the listing company should be prohibited during this period.

Listing Company Request for Additional Specialist Information Following Interviews

Under the Policy, a listing company may choose to pick its specialist unit after interviewing a pool of three, four, or five units selected by the Allocation Committee. Currently, any follow-up questions conveyed to the Exchange from a listing company regarding specialist unit(s) it interviewed are restricted to questions regarding publicly-available information. The Exchange must approve the request and all units in the group of units interviewed must be notified by the Exchange of the request.

The NYSE proposes that if a listing company has a follow-up question for any specialist unit(s) it interviewed, it must be conveyed to the Exchange. The Exchange will contact the unit(s) to which the question pertains and will provide any information received from the unit(s) to the listing company. The NYSE purposes to eliminate the requirement that only publicly-available information be provided and the language requiring Exchange approval. The requirement that the Exchange notify other units of the company's request also would be deleted to make the process more efficient. The Exchange believes that the listing company should have the ability to selectively request information of a unit it has interviewed. For example, at times, an issue may be discussed at subsequent interviews and the listing company would like similar information from a unit it had already interviewed. Or, a listing company may have further questions of the units it has selected for final consideration. The Exchange believes that it would be an unnecessary burden on the listing company and all the units to require information that is not of interest to the listing company.

Common Stock Listing After Preferred

Currently, the Policy does not address the situation involving a common stock being listed after its preferred stock has been allocated. The Exchange is proposing that the allocation of the common stock of a company listing after its preferred stock has been listed would be open to all units. The company may select Option 1 (in which the Allocation Committee selects the specialist unit to be allocated the company's stock) or Option 2 (in which the company selects a specialist unit from among a group of units chosen by the Allocation Committee). If Option 2 is selected, the specialist unit that trades the preferred stock must be included in the group of units comprising the interview pool. The company will not be able to select the specialist unit trading the preferred stock without going through the allocation process.

Listed Company Mergers

Currently, when two listed companies merge, the merged entity is assigned to the specialist in the company that is determined to be the survivor-in-fact (dominant company). Where no surviving entity can be identified, the matter is referred to the Allocation Committee and all specialists are invited to apply. The merged company may request either Option 1 or Option 2, with no provisions to include or exclude any unit from consideration by

[6] *See* Amendment No. 1, *supra* note 2.

[7] *See* Securities Exchange Act Release No. 40539 (October 9, 1998), 63 FR 56281 (October 21, 1998). The Exchange stated at the time the increase was needed to maintain sufficient levels of floor Governor supervision and timely response, in the face of an increase in trading volume and number of listed securities in recent years.

the Allocation Committee. There is no provision for the merged company to select a unit that trades one of the listed companies which is merging without going through the allocation interview process.

The Exchange is proposing several changes to the Policy. Where no surviving entity can be identified, the listing company would be permitted to select one of the units trading the merging companies without going through the allocation interview process. This would make the allocation process more efficient and less time consuming for the listing company in those instances in which the company ultimately may have decided that it will select one of the units which traded the merging companies. The Exchange believes that requiring the interview process would be more form over substance. If the listing company determines to go to allocation, it may select Option 1 or Option 2. Under Option 1, the company would not be able to request that the Allocation Committee not allocate the stock to one of the units trading the merging companies. If the company chooses Option 2, the interview pool would consist of the specialist units of the merging companies and must include additional units. The number of additional units must be consistent with the Policy requirement that each pool consists of three to five units. Under Option 2, the company would not be permitted to request that any of the units trading the merging companies be excluded from the interview pool.

The Exchange believes that this approach strikes an appropriate balance between the interests of specialist units, who have developed a relationship and a history of market making performance with a listed company, and the interests of listed companies in choosing the most appropriate unit to be their specialist. Should be merged entity choose to remain with the current specialist (or either of the current specialists), it is free to do so. The distinction in this situation from the one discussed below regarding target stocks is that the merged entity's management team is customarily a combination of the two existing management terms, and the Exchange believes that the current specialist(s) ought to have a reasonable opportunity to present its case to this new management, without, of course, any guarantee of receiving the allocation. A portion of the management team from the pre-merged entities should not have the right to exclude a specialist(s) from even being considered for the allocation. The Exchange believes that such specialist should be given the opportunity to be considered for the allocation, and if it is determined not to be the best candidate for the allocation, then the unit will not be selected. In the viewpoint of the Exchange, based on experience gained over a long history of managing stock allocations, the proposed approach is the fairest to all parties, while furthering the overall objectives of the Policy. [8] The Exchange believes that these changes will make the Policy more consistent in its approach in providing the opportunity for input and choice on the part of the listing company.

Listed/Unlisted Company Mergers

Currently, if the unlisted company is the survivor-in-fact, the company may chose to remain registered with the unit that traded the listed company involved in the merger or may request that the matter be referred to allocation, with applications invited from all units. The company may request that the unit trading the listed company not be allocated the stock (and, as a result, not be included in the pool of units under Option 2) and the Allocation Committee must honor that request.

The Exchange is proposing to conform this Policy to the proposed Policy involving listed company mergers with no survivor-in-fact. Therefore, the Policy would be amended to preclude the unlisted company from excluding the specialist unit that trades the listed company from consideration by the Allocation Committee. Further, the Policy would require that if the unlisted company chooses Option 2, the unit trading the listed company must be included in the allocation pool.

Issuance of Tracking (''Target'') Stock

These securities (also known as ''letter stock'') typically are ''targeted'' to a specific aspect of an issuer's overall business. There are two instances in which ''target'' stocks are being listed. The first involves situations in which the ''target'' stock is being ''uncoupled'' from the listed company, and itself listing on the Exchange. Under the current Policy, when such a security is ''uncoupled'' and becomes an independent listing, it remains with the specialist registered in the stock prior to its separate listing (''original stock''), unless the listing company requests that the new stock be referred to the Allocation Committee. The Allocation Committee must honor the company's request not to be allocated to the specialist unit that had traded the original stock. This provision will remain unchanged. However, the Policy is being amended to require the Allocation Committee to honor the listing company's request to include as well as exclude from the allocation pool, the specialist unit that had traded the original stock. This will conform this Policy to that proposed for the second type of ''target'' stock situation.

The second type of ''target'' stock involves a listed company issuing a ''target'' stock to track a separate business line. In these instances, the issue is assigned by Exchange staff to the specialist in the listed company issuing the ''target'' stock. As a result, the new listing company (the ''target'' stock) has no input in the allocation decision. The Exchange proposes to amend the Policy to conform with the spin off/related company policy. The Exchange believes that these situations should be treated consistently under the Policy, since they are similar situations.

Target stocks, whether the target stock itself is joining the Exchange as a separate listing (*e.g.,* Con Edison Inc. issuing distinct securities of Con Edison of New York) or where the target stock represents a tracking of a bsuiness line of the current listed company (*e.g.,* GM and GMH), will be treated in the same manner as spin-offs and listing of related companies. This is due to the existing relationship of the specialist with the currently listed company (herein-after referred to as the ''Parent'') and to the management of the Parent. The policy for allocating such securities is that the listing company may choose to stay with the specialist unit registered in the related listed company or be referred to the Allocation Committee. In the latter case, the company may request not to be allocated to the Parent's specialist and the Allocation Committee will honor such request. Alternatively, the listing company may request the exclusion or inclusion of the Parent's specialist in the allocating pool if the listing company elects Option 2.[9]

Target stocks have a similar relationship with the Parent's specialist and the Exchange believes they should have the option to either include or exclude the Parent's specialist from the pool of specialists determined by the Allocation Committee. According to the Exchange, the rationale for this is two-fold. First, if the Parent company is unsatisfied with the specialist's performance to date, the Exchange believes it is unnecessary to include this unit in the pool if the company so requests. In the same vein, if the Parent company is satisfied with the specialist's performance but wishes to avail itself of the opportunity to

[8] *See* Amendment No. 1, *supra* note 2.

[9] *See* Amendment No. 1, *supra* note 2.

interview other units, the company should have the option of including such specialist in the interview pool along with other specialists determined by the Allocation Committee. Finally, it is important to bear in mind that, often, senior management of the subject companies is the same as that of the Parent (or there is substantial overlap), and, therefore, the choice of a specialist will be influenced by an assessment of the current relationship and market making performance.[10]

Allocation Sunset Policy

When the Exchange allocates a company that is listing its shares from its initial public offering, that allocation decision remains effective for three months. If the company does not list within that time, the matter is referred again to the Allocation Committee. The policy balances the interests of the Exchange in preventing a listing company from delaying listing in order to select a different specialist versus the legitimate economic interests of a listing company to delay an IPO due to market conditions. However, if the selected specialist unit merges or is involved in a combination within the three-month period, the Exchange is proposing to amend the Policy to permit the listing company to choose whether to stay with the merged specialist unit, or be referred to allocation. This recognizes that the listing company may wish to reconsider its choice in light of the changed circumstances regarding the specialist unit it chose.

Listing Company Attendees at Specialist Interviews

The current Policy requires that a senior official of the listing company of the rank of Corporate Secretary or above be present at the interviews with specialists under Option 2. In the case of structured products' listings,[11] the corporate makeup contemplated by the existing requirement often does not exist. The Exchange proposes to amend the Policy to clarify that any senior officer[12] of the issuer may be present at the interview to satisfy the requirement.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[13] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed changes are consistent with these objectives in that they would enable the Exchange to ensure fairness and equal opportunity in the allocation process.

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

The Exchange has neither solicited nor received written comments on 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 approved the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule changeshould be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–34 and should be submitted by March 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5759 Filed 3–8–00; 8:45 am]

BILLING CODE 8010–01–M

[10] *See* Amendment No. 1, *supra* note 2. In terms of listing standards, target stocks are treated in the same way as any other second class of stock of the issuer. *See* Amendment No. 1, *supra* note.

[11] A structured product is a security whose value is based on the value of another security.

[12] The structured product company will designate which of its officers is a senior officer. *See* Amendment No. 1, *Supra* note 2.

[13] 15 U.S.C. 78f(b)(5).

[14] 17 C.F.R. 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42490; File No. SR–NYSE–00–01]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Continuing Annual Listing Fees for Canadian Companies

March 2, 2000.

On January 4, 2000, the New York 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 for calculating continuing annual fees for all Canadian companies. The proposed rule change was published for comment in the **Federal Register** on January 25, 2000.[3] No comments were received on the proposal. This order approves the proposal.

It has been the custom and practice of the Exchange to calculate the continuing annual fee for Canadian companies listed before September 8, 1989 on the basis of total worldwide shares, with a 50% discount for companies with more than half of their operations outside the United States. The continuing annual fee for Canadian companies listed after September 8, 1989 and all other non-U.S. companies has been calculated based on shares issued in the U.S. The proposed change will calculate continuing annual fees for all Canadian companies based on shares issued in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42350 (January 19, 2000), 65 FR 4007.

U.S., thereby conforming the continuing annual fee for Canadian companies listed before September 8, 1989, to the standard applied to all other non-U.S. companies.

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 Section 6(b).[4] Specifically, the Commission believes that conforming the calculation procedures for the continuing annual fee for Canadian companies into one standard calculation for all Canadian companies is consistent with the Section 6(b)(4)[5] requirements that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.[6]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–00–01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5760 Filed 3–8–00; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3243]

Office of Overseas Schools, Notice of Information Collection Under Emergency Review: Overseas Schools—Grant Status Reports, OMB No. 1405–0033

AGENCY: Department of State.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Renewal.

Originating Office: A/OPR/OS.

Title of Information Collection: Overseas Schools—Grant Status Reports.

Frequency: Annual.

Form Number: OMB No. 1405–0033.

Respondents: Recipients of grants.

Estimated Number of Respondents: 190.

Average Hours Per Response: .25.

Total Estimated Burden: 47.5.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by February 1, 2000. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until the 60th day from the date that this regular notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Keith D. Miller, Office of Overseas Schools, U.S. Department of State, Washington, DC 20522–0132, (202) 261–8200.

Dated: January 21, 2000

Robert B. Dickson,

Executive Director, Bureau of Administration, U.S. Department of State.

[FR Doc. 00–5776 Filed 3–8–00; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3244]

Bureau of Consular Affairs, Overseas Citizens Services, Office of Children's Issues; 30-Day Notice of Information Collection; Application for Assistance Under the Hague Convention on Child Abduction; OMB Number 1405–0076; Form Number DS–3013 (Formerly DSP–0105)

AGENCY: Department of State.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement.

Originating Office: CA/OCS/CI.

Title of Information Collection: Application for Assistance Under the Hague Convention on Child Abduction.

Frequency: On occasion.

Form Number: DS–3013 (formerly DSP–0105).

Respondents: Individuals.

Estimated Number of Respondents: 500.

Average Hours Per Response: 1.

Total Estimated Burden: 500.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Mary B. Marshall, CA/OCS/CI, Room 4811, 2201 C St. NW, U.S. Department of State, Washington, DC 20520, (202) 647–2598. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of

Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: January 19, 2000.

Frank E. Moss,

Executive Director, Bureau of Consular Affairs, U.S. Department of State.

[FR Doc. 00–5777 Filed 3–8–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 3238]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: February 9 and 25, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703 875–6644).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: March 2, 2000.

William J. Lowell,

Director, Office of Defense Trade Controls,

U.S. Department of State,
Washington, DC 20520, February 9, 2000.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of one HS601 HP Galaxy IV–R Commercial Communications satellite to French Guiana for launch on an Ariane launch vehicle.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

U.S. Department of State,
Washington, DC 20520, February 25, 2000.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of 2020 Paveway II and 810 Paveway III laser guided bombs for the French Ministry of Defense for end-use of the French Air Force and Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

[FR Doc. 00–5646 Filed 3–8–00; 8:45 am]

BILLING CODE 4710–25–U

DEPARTMENT OF STATE

[Public Notice 3241]

Culturally Significant Objects Imported for Exhibition Determinations: ''Gerrit Dou (1613–1675): Master Painter in the Age of Rembrandt''

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999, as amended by Delegation of Authority No. 236–1 of November 9, 1999, I hereby determine that the objects to be included in the exhibit, ''Gerrit Dou (1613–1675): Master Painter in the Age of Rembrandt,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the exhibit objects at the National Gallery of Art, Washington, D.C., from on or about April 16, 2000, to on or about August 6, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, S.W., Washington, DC 20547–0001.

Dated: March 1, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–5774 Filed 3–8–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3242]

Bureau of Educational and Cultural Affairs; South Pacific Scholarship Program; Request for Proposals

SUMMARY: The Office of Academic Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the South Pacific Scholarship Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to organize and carry out an academic exchange program for students from the sovereign nations of the South Pacific. The grantee will be responsible for all aspects of the program, including publicity and recruitment of applicants; merit-based competitive selection; placement of students at an accredited U.S. academic institution; student travel to the U.S.; orientation; up to four years of U.S. degree study at the bachelor's or master's level; enrichment programming; advising, monitoring and support; pre-return activities; evaluation; and follow-up. The duration of the grant will be up to five years. The approximate level of funding in FY2000 is $700,000.

Program Information

Overview: The South Pacific Scholarship Program was established by

the United States Congress to provide opportunities for U.S. study to qualified students from the sovereign nations of the South Pacific, in fields important for the region's future development. The Fiscal Year 2000 State Department Authorization Bill (HR–3427) and the Conference Report on the Fiscal Year 2000 Consolidated Appropriations Act (HR–3194) provide for exchanges between the U.S. and South Pacific.

This program supports increased mutual understanding between the people of the U.S. and those of the South Pacific Islands. Students from the following nations are eligible to apply for these scholarships: Cook Islands, Fiji, Kiribati, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. This is the first open competition for administration of this grant.

Requirements and Implementation

The requirements for administration of this program are outlined in further detail in this document and in the Program Objectives, Goals and Implementation document. The proposal should respond to each item in the POGI.

Fields of study under the program are based on recommendations from Department of State geographic office representatives and U.S. embassies abroad and have included public administration, journalism, education, environmental studies, and business. Students selected for these scholarships have enrolled in four year undergraduate degree programs, or in master's degree programs. The latter have generally involved one year of preparatory U.S. study followed by up to two years of master's degree study. This grant award will cover the entire program in the U.S. for the students selected. Students are expected to return home following the completion of their U.S. programs.

Program Components

1. Planning, implementation and monitoring of entire exchange program, based on guidance from the Bureau of Educational and Cultural Affairs. The proposal must demonstrate an understanding of the South Pacific region and culture and the needs of students coming to the U.S. from the region.

2. Publicity, recruitment and application process for the program. The proposal should indicate specifically what methods will be used to carry out this process for the South Pacific Islands.

3. Merit-based selection of principals and alternates. A pool of alternates should be established that may be drawn on if necessary in subsequent years. Communication with applicants and notification of selection for the program.

4. Placement and enrollment of students at an accredited U.S. college/university appropriate to their academic and future professional goals. Students may be placed together at the same institution or at different institutions. The proposal should explain how identification with the South Pacific Scholarship program will be established and maintained among students.

5. Pre-arrival information for students, assistance with visa application process, travel to the U.S., arrival.

6. Orientation and settling in at U.S. institution. The proposal should indicate how the applicant will prepare the students for their exchange experience.

7. Provision of stipends and coverage of other appropriate living/study/enrichment expenses for participants throughout their program. Provision of tax withholding and health insurance.

8. On-going monitoring, academic advising, and general support for students throughout the program.

9. Management of cross-cultural issues, special situations and emergencies.

10. Opportunities for transfers and exchanges to other U.S. universities during the program to diversify the students' experience and fulfill academic goals.

11. Obtaining of tuition waivers, reduced fees, and other forms of cost-sharing.

12. Cultural/community enrichment for students about U.S. society and culture.

13. Internships and professional development.

14. Pre-return and reentry activities.

15. Evaluation and follow-on including alumni activities.

16. Fiscal Management of any sub-contractors.

17. Compliance with J–1 visa requirements regarding health insurance for participants.

Guidelines

The amount of the grant award in FY 2000 is expected to be approximately $700,000, based on availability of funds. The award will be made in Spring/Summer 2000. The grantee should begin planning immediately for recruitment at that time. Participants are expected to begin their U.S. study programs between January 2001 and Fall 2001.

Proposal budgets should include all costs for students to complete the entire three or four years of degree study in the U.S. The proposal should indicate how many students will be supported for a complete degree program with this funding. The grant will remain open for approximately five years.

If performance under this grant is satisfactory, the award may be renewed each year for approximately two additional years at the Bureau's discretion, assuming that the program continues to receive federal funding.]

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

Budget Guidelines

Since grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs are limited to $60,000, such organizations are not eligible to compete for this grant.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program may include the following:

(1) Publicity, recruitment, selection, placement and communication with applicants and participants.

(2) Travel for student participants between home and program location.

(3) Tuition and fees, stipends for living costs, book allowances, and other necessary expenses for the students.

(4) Advising and monitoring of students; academic and cultural support and enrichment activities. May include some U.S. travel.

(5) Pre-departure activities and evaluation.

(6) Staff and administrative expenses to carry out the program activities. Administrative and overhead costs should be as low as possible.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFP should reference the above title and number *ECA/A–SP–00–01.*

FOR FURTHER INFORMATION CONTACT: Marianne Craven, Managing Director of Academic Programs, ECA/A, Room 202, U.S. Department of State, Annex 44, 301 4th Street, SW., Washington, DC 20547, tel. (202) 619–6409, fax. (202) 205–2452, e-mail: mcraven@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award

criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Marianne Craven, program officer for this activity, on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, April 7, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and *10* copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A–SP–00–01,* Program Management, ECA/EX/PM, Room 336, SA–44, 301 4th Street, SW, Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content.

Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package requirements by Bureau offices responsible for these functions. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. For program content, cost-effectiveness, and other criteria spelled out in the RFP, the review is conducted by an advisory, assistance award-review panel composed of Bureau and Department officers. Additional officers, including geographic area personnel, also review proposals for feasibility as well as potential for short- and long-term impact. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the Fiscal Year 2000 State Department Authorization Bill (HR–3427) and the Conference Report on the Fiscal Year 2000 Consolidated Appropriations Act (HR–3194).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding.

Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: February 29, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–5775 Filed 3–8–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice No. 3240]

Bureau of Oceans, International Environmental and Scientific Affairs; Public Meeting To Discuss Preparations for Negotiations on an International Agreement Through the United Nations Environment Program on Persistent Organic Pollutants

SUMMARY: The United States government, through an interagency working group chaired by the U.S. Department of State, is preparing for the fourth in a series of negotiations through the United Nations Environment Program (UNEP) on a global agreement to address certain persistent organic pollutants (POPs) that result in risks of a transboundary nature. The fourth negotiating session is scheduled to take place in Bonn, Germany, on March 20–25, 2000. The Department of State will host a public meeting in advance of this session to outline issues likely to arise in the context of the negotiations. The public meeting will take place on Tuesday, March 14, 2000, from 10 a.m. to 11:30 a.m. in Room 1408 of the U.S. Department of State, 2201 C Street NW, Washington, D.C. To expedite their entrance into the building, attendees should provide to Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (tel. 202–647–9266, fax 202–647–5947) their name, organization, date of birth and Social Security number by noon on Monday, February 13, 2000. Attendees should enter the C Street entrance and bring picture identification with them. For further information, please contact Ms. Cornelia Weierbach, U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW, Washington DC 20520. Phone 202–647–4548, fax 202–647–5947, e-mail weierbachcm@state.gov.

SUPPLEMENTARY INFORMATION:

The UNEP POPs Negotiations

The POPs treaty is the first global treaty to address in a comprehensive manner the risks to human health and the environment of chemicals and other pollutants. The treaty will in the first instance deal with twelve substances: Aldrin, Endrin, HCBs, Toxaphene, Chlordane, Dieldrin, Heptachlor, Mirex, DDT, PCBs, dioxins and furans. These substances fall into three categories: pesticides, industrial chemicals, and unintended by-products of combustion and industrial processes.

These global negotiations are an ambitious undertaking, since they encompass a broad range of measures to address POPs of transboundary concern. These range from controls on production and use for commercial chemicals, controls on POPs wastes, and controls on by-products that come from combustion and industrial processes. For many countries, this will be the first time that these substances have been controlled, and the effects are likely to be far-reaching.

Since the U.S. and other developed countries have already taken actions on these chemicals, major goals are broad participation in the agreement by developing countries and, consequently, meaningful reductions in the amount of pollutants that are released into the environment. A critical part of the agreement will be technical and financial assistance mechanisms to help developing countries effectively implement their obligations.

Timetable and Point of Contact

The POPs Intergovernmental Negotiating Committee (INC) expects to complete its work at its fifth session, which will take place in South Africa in fall 2000. In preparation for the fourth session of the INC, the Administration is preparing its position for the negotiation, and has scheduled a public meeting to be held on Tuesday, March 14, 2000 from 10:00 a.m. to 11:30 a.m. in Room 1408 of the U.S. Department of State. Members of the interagency working group who will participate in the proposed negotiation will provide an overview of U.S. preparations for the fourth session. The U.S. Department of State is issuing this notice to help ensure that interested and potentially affected parties are aware of and knowledgeable about these negotiations, and have an opportunity to offer comments. Those organizations/individuals which cannot attend the March 14, 2000 meeting, but wish to either submit a written comment or to remain informed, should provide Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (phone 202–647–9266; fax 202–647–5947) with their statement and/or their name, organization, address, telephone and fax numbers, and their e-mail address.

Dated: March 3, 2000.

Daniel Fantozzi,

Director, Office of Environmental Policy, Department of State.

[FR Doc. 00–5647 Filed 3–8–00; 8:45 am]

BILLING CODE 4710–06–U

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice–3239]

Extension of the Restriction on the Use of United States Passports for Travel To, In or Through Iraq

On February 1, 1991, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(2) and (a)(3), all United States passports, with certain exceptions, were declared invalid for travel to, in, or through Iraq unless specifically validated for such travel. The restriction was originally imposed because armed hostilities then were taking place in Iraq and Kuwait, and because there was an imminent danger to the safety of United States travelers to Iraq. American citizens then residing in Iraq and American professional reporters and journalists on assignment there were exempted from the restriction on the ground that such exemptions were in the national interest. The restriction has been extended for additional one-year periods since then, and was last extended through March 20, 2000, pursuant to your decision of March 18, 1999.

Conditions in Iraq remain hazardous for Americans. Iraq continues to refuse to comply with UN Security Council resolutions to fully declare and destroy its weapons of mass destruction and missiles while mounting a virulent public campaign in which the United States is blamed for maintenance of U.N. sanctions. The United Nations has withdrawn all U.S. citizen UN humanitarian workers from Iraq because of the Government of Iraq's stated inability to protect their safety. Since January 1999, Iraq has fired anti-aircraft artillery and surface-to-air missiles at U.S. and coalition aircraft enforcing the no-fly zones over northern and southern Iraq over 160 times, and has repeatedly illuminated U.S. and coalition aircraft with target-acquisition radar. In February 1999, Iraqi President Saddam Hussein offered a reward for the downing of an American or British aircraft or the capture of an American or British pilot.

Local conflicts within Iraq also pose hazards to travelers. The central government does not maintain control over all areas in the South and travel at night is particularly hazardous, given the potential for armed clashes between government forces and local resistance elements. Military repression of Shia communities continues in southern Iraq;

hundreds of persons were summarily killed in security sweeps and entire villages were razed during 1999. The government's draconian repression of its civilian population creates a high risk to innocent bystanders.

U.S. citizens and other foreigners working inside Kuwait near the Iraqi borders have been detained by Iraqi authorities in the past and sentenced to lengthy jail terms for alleged illegal entry into the country. Although our interests are represented by the Embassy of Poland in Baghdad, its ability to obtain consular access to detained U.S. citizens and to perform emergency services is constrained by Iraqi unwillingness to cooperate. In light of these circumstances, I have determined that Iraq continues to be a country ''where there is imminent danger to the public health or physical safety of United States travelers''.

Accordingly, United States passports shall continue to be invalid for use in travel to, in, or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. The restriction shall not apply to American citizens residing in Iraq on February 1, 1991, who continue to reside there, or to American professional reporters or journalists on assignment there.

The Public Notice shall be effective from the date it is published in the **Federal Register** and shall expire at midnight on the same date in the year 2001, unless sooner extended or revoked by Public Notice.

Dated: February 24, 2000.

Madeleine K. Albright,

Secretary of State, U.S. Department of State.

[FR Doc. 00–5773 Filed 3–8–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7004]

Chemical Transportation Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). CTAC provides advice and makes recommendations to the Coast Guard on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S.-flag vessels in U.S. ports and waterways.

DATES: Application forms should reach the Coast Guard on or before September 1, 2000.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling (202) 267–1217/0081; or by faxing (202) 267–4570. Submit application forms to the same address. This notice and the application form are available on the Internet at http://dms.dot.gov. The application form is also available at http://www.uscg.mil/hq/g-m/advisory/ctac/ctac.htm.

FOR FURTHER INFORMATION CONTACT: Commander Robert F. Corbin, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone (202) 267–1217/0081, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: The Chemical Transportation Advisory Committee (CTAC) is a Federal advisory committee constituted under 5 U.S.C. App. 2. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety and Environmental Protection on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S.-flag vessels in U.S. ports and waterways. The advice and recommendations of CTAC also assist the U.S. Coast Guard in formulating the position of the United States on hazardous material transportation issues prior to meetings of the international Maritime Organization.

CTAC meets at least once a year at Coast Guard Headquarters in Washington, DC. It may also meet more often than once a year as necessary. CTAC's subcommittee and working groups may meet to perform specific assignments as required.

The Coast Guard will consider applications for ten positions that expire in December 2000. To be eligible, applicants should have experience in chemical manufacturing, vessel design and construction, marine transportation of chemicals, occupational safety and health, or marine environmental protection issues associated with chemical transportation. Each member serves for a term of three years. Some members may serve consecutive terms. However, not more than 50 percent of the members with expiring terms may be re-appointed. All members serve at their own expense, and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Dated: March 2, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–5832 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–7005]

National Offshore Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for membership on the National Offshore Safety Advisory Committee (NOSAC). NOSAC provides advice and makes recommendations to the Coast Guard on matters affecting the offshore industry.

DATES: Applications should reach us on or before July 30, 2000.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–1181; or by faxing 202–267–4570. A copy of the application form is available from the Coast Guard's Advisory Committee web page at: *http://www.uscg.mil/hq/g-m/advisory/index.htm* Send your application in written form to the above street address. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Captain Peter A. Richardson, Executive Director of NOSAC, or James M. Magill, Assistant to the Executive Director, telephone 202 267–1181, fax 202 267–4570.

SUPPLEMENTARY INFORMATION: NOSAC is a Federal advisory committee constituted under 5 U.S.C. App. 2. It consists of 14 regular members who have particular expertise, knowledge, and experience regarding drilling and production technology, equipment, and techniques that are used, or are being developed for use, in the exploration or recovery of offshore mineral resources. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety and Environmental Protection, on safety and rulemaking matters relating to the offshore mineral and energy industries.

This advice assists us in formulating the positions of the United States in advance of meetings of the International Maritime Organization.

NOSAC meets twice a year, with one of these meetings being held at Coast Guard Headquarters in Washington, DC. It may also meet for extraordinary purposes. Subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for four positions that expire or become vacant in January 2001. To be eligible, applicants should have experience in offshore operations, diving services, pipelaying, or general public interest associated with offshore activities. Each member serves a term of 3 years. A few members may serve consecutive terms. All members serve at their own expense, and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the U.S. Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and minority group members.

If you are selected as the general public member, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: March 2, 2000.

Joseph J. Angelo,

Director of Standards Marine Safety and Environmental Protection.

[FR Doc. 00–5831 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–00–7018]

Fees for FAA Services for Certain Flights; Public Availability of Letter

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces the availability to the public of a letter to known users of ''overflight'' services concerning the reestablishment of certain fees. This letter states that these fees will be charged for air traffic control (ATC) and related services provided to certain aircraft that fly through U.S.-controlled airspace, but neither take off from nor land in the United States.

FOR FURTHER INFORMATION CONTACT: Randy Fiertz (202) 267–7140, Acting Director, Office of Performance Management (APF–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: The FAA is sending letters to know major users and other interested entities about the reestablishment of ''overflight'' fees. These fees will be charged for ATC and related services provided to certain aircraft that fly through U.S.-controlled airspace, but neither take off from nor land in the United States. Such fees are comely referred to as ''overflight'' fees. The FAA is taking this action to give the public notice of the letter being sent to affected parties concerning reestablishment of ''overflight'' fees. This notice and a copy of the letter below will be available for public inspection in the docket at U.S. Department of Transportation Dockets, 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590, between 10 a.m. and 5 p.m. weekdays, except Federal holiday. The docket may also be examined electronically through the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/* at any time.

Issued in Washington, DC on March 6, 2000.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Letter to Users of Certain Overflight ATC Services

Dear _____:

The Federal Aviation Administration (FAA) will soon announce the reestablishment of user fees that will be charged for air traffic control (ATC) and related services provided to certain aircraft that fly through U.S.-controlled airspace, but neither take off from, nor land in, the United States. Such fees are commonly referred to as ''overflight'' fees.

The implementation of these fees is required by the Federal Aviation Reauthorization Act of 1996 (The Act). The Act states that the FAA should establish overflight fees through the publication of an Interim Final Rule. Under the Interim Final Rule process, the fees will take effect shortly after publication in the **Federal Register**. The FAA will invite public comment on the Interim Final Rule. After thorough consideration of the comments received, the FAA will make any appropriate changes and then issue a Final Rule.

You may recall that the FAA published an Overflight Fee Interim Final Rule in March 1997. The costs upon which those overflight fees were based were determined using FAA's 1995 Cost Allocation Study. On January 30, 1998, the U.S. Court of Appeals for the District of Columbia set aside the 1997 rule, concluding that the FAA had used an incorrect methodology to allocate fixed and common costs. As a result of the Court's ruling, the FAA immediately suspended fee collections, subsequently refunded the $40 million in fees that had then been collected, and withdrew the Interim Final Rule.

Although the Court of Appeals' ruling effectively terminated the 1997 overflight fees, the Act remains in effect. To comply with the Act and accurately establish the costs of ATC services using the best available information, the FAA is developing new overflight fees using actual fiscal year 1999 cost data from its new cost accounting system. This system has been reviewed carefully by accounting and financial professionals, both inside and outside the government, to ensure that the ATC enroute and oceanic cost data used are the most accurate available.

The Office of Inspector General of the Department of Transportation recently completed an in-depth review of the fiscal year 1998 cost accounting data and the flight data used to derive the new fees. A copy of the Inspector General's report can be found at *www.oig.dot.gov.avauds.htm* (Report no. FE–2000–024, dated December 17, 1999). The report includes recommendations, which the FAA has acted upon, including basing the overflight fees on actual cost accounting data for fiscal year 1999.

I hope the above information is useful to you in your planning. Our regulatory procedures do not allow me at this time to provide further details beyond those contained in this letter. Once the Interim Final Rule has been published, however, there will be ample opportunity for you to present your views—including a public meeting that will be announced when the Interim Final Rule is published. I look forward to working with you more closely at that time.

While the Interim Final Rule process is not the customary rulemakng approach used by the FAA, it is required by law for this particular rulemaking. Nevertheless, I can assure you that all comments received will be fully considered by the FAA before the Final Rule is issued.

Sincerely,

Donna R. McLean,
Assistant Administrator for Financial Services.

[FR Doc. 00–5778 Filed 3–6–00; 3:13 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No: MARAD–2000–7011]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the Vessel KIRSTEN ANNE.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with P.L. 105–383 and MARAD's regulations at 46 CFR 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 10, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7011. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested: Name of vessel: KIRSTEN ANNE, Owner: Robert and Laurie Lindsey.

(2) Size, capacity and tonnage of vessel: The KIRSTEN ANNE measures 48.5 feet in length and displaces 29 net tons, 33 gross tons. The capacity of the vessel is 12 passengers or less.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''If a waiver is granted, we intend to use this vessel to carry passengers for hire on sailing wildlife/adventure cruises, scientific research charters, whale watching/videography, and Eco-tourism to the refuges and National Monuments in our area of opportunity. We will operate this vessel in the greater Kodiak Island Archipelago and Gulf of Alaska. Some anticipated offerings will be cruises of the Katmai coast and birding expeditions in the Kodiak area as well as the Alaska Peninsula. We look forward to offering the scientific community an affordable alternative for long-range /duration studies involving Stellar Sea Lions and seabirds.''

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1979, place of construction: Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant:

''The Kodiak Island area is in its infancy of charter work with a small but competent group of operators who offer primarily fishing charters and hunting support. Although many of the vessels offer some Whale watching/Ecotourism type charters, there are no sailing vessels involved in charter work in the Kodiak area. Unofficially, halibut fishing is the largest group of charter operations, Salmon fishing would be second, and Hunter support is third and general sightseeing is the smallest segment of the charter fleet.

We feel the economics are so marginal that we can only afford to offer this service because we were able to purchase our vessel for a very reasonable price. Already established in this area, we can subsidize the operation through startup with income from our other occupations. The only impact that a waiver will have on other operations in this area would be positive based on exposure, a service not previously offered and additional draw for tourists to visit Kodiak. The replacement value of our vessel is approximately $380,000. If that were the only way to start a sail charter operation, it would not be economically feasible in this market.

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''The effect a waiver on local shipbuilding /repair in this area would be positive because we will be using our vessel more than we do now which will have the effect of revenue for local businesses. We anticipate some additional equipment may be necessary to begin operations. This equipment will be contracted with locally owned businesses and purchased in Kodiak. Should we need any modifications or repairs to the boat as our business grows, we will use local shipyards and chandlers. There is no shipbuilding other than small one-off aluminum boat shops on Kodiak Island and no large boat builders in the state of Alaska. When our operation becomes successful, we anticipate the need for an American built sailboat designed specifically for this area. Our concept of this vessel would be approximately 65–80 feet in length displacing at least 50 tons. This new vessel will be an American built motorsailer with enhanced diving support and capable of extended cruises. Clearly, we are dedicated to this concept and feel that the only impact on shipbuilding would be positive.''

Dated: March 3, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–5638 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–6884]

Reports, Forms, and Recordkeeping Requirements

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit

public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes a collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 8, 2000.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to the Docket Section, Room PL401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided by referencing its OMB Clearance Number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. William Holden, NHTSA, 400 Seventh Street, SW., Room 6124, Washington, DC 20590. Mr. Holden's telephone number is (202) 366–1566. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

National Driver Register Reporting Requirement for 23 CFR Part 1327

Type of Request—Extension of clearance.

OMB Clearance Number—2127–0001.

Form Number—This collection of information uses no standard form.

Requested Expiration Date of Approval—Three years from date of approval.

Summary of the Collection of Information—The National Driver Register Act of 1982 (Pub. L. 97–364), as amended, mandates the Secretary of Transportation to establish and maintain a National Driver Register to assist chief driver licensing officials of participating states in exchanging information about the motor vehicle driving records of individuals. The Act requires the chief driver licensing official of each participating state to submit a report to the Secretary of each individual who is denied a motor vehicle operator's license by that State for cause; whose motor vehicle operator's license is revoked, suspended, or canceled by that State for cause; or who is convicted under the laws of that State of any of the following motor vehicle-related offenses or comparable offenses: (a) Operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; (b) a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways; (c) failing to give aid or provide identification when involved in an accident resulting in death or personal injury; (d) perjury or knowingly making a false affidavit or statement to officials about activities governed by a law or regulation on the operation of a motor vehicle. The Act also requires the chief driver licensing officials of participating states to check the NDR on all first time above-minimum age driver license applicants in their states.

The Commercial Motor Vehicle Safety Act of 1986 requires the states to check the NDR for all applicants for Commercial Driver Licenses.

Description of the need for the information and proposed use of the information—The purpose of the NDR, and thus this information collection activity, is to prevent the issuance of driver's licenses to problem drivers in order to enhance traffic safety. Through amendments to the NDR Act, the activity also serves to prevent the certification of airline pilots, merchant mariners, locomotive operators, and individual employed motor vehicle operators if they are problem drivers.

The information will be used by NHTSA in exercising its statutory authority to operate the NDR. Without this information, states could issue licenses to individuals who are suspended or revoked in other states, or could issue a duplicate license to an individual who is licensed in another state, allowing them to spread their violations over a number of licenses.

Description of Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—The 51 respondents are the State driver licensing agencies, including the District of Columbia. The frequency of response depends on how each state chooses to update the NDR master file. File updates can be daily or monthly.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—The agency estimates the reporting burden for this year will be $37,040 for the 51 jurisdictions. The reporting burden is based on information systems personnel salaries and related expenses.

Authority: 49 U.S.C. 30304; delegation of authority at 49 CFR 1.50.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 00–5806 Filed 3–8–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–6947 Notice 1]

Subaru of America, Inc.; Receipt of Application for Determination of Inconsequential Non-Compliance

Subaru of America, Inc. (Subaru) of Cherry Hill, New Jersey, has applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 ''Motor Vehicle Safety'' for a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 209, ''Seat Belt Assemblies,'' on the basis that the noncompliance is inconsequential to motor vehicle safety. Subaru has filed a report of noncompliance pursuant to 49 CFR Part 573 ''Defects and Noncompliance Report.''

This notice of receipt of the application is published under 49 U.S.C. 30118 and 30120 and does not

represent any agency decision or other exercise of judgement concerning the merits of the application.

Description of Noncompliance

Replacement seat belt assemblies had been packaged by Subaru without instruction sheets required under 49 CFR 571.209, S4.1(k) and (1). All of the seat belt assemblies involved meets all other requirements of FMVSS No. 209.

Approximately 522 sets of replacement seat belt assemblies manufactured and sold were involved.

Supporting Information as Submitted by Subaru

Supporting Data, Views and Arguments:

In accordance with FMVSS 209, S4.1 (k) replacement seat belt assemblies must be accompanied by installation instructions for installing the assembly in a motor vehicle. These instructions ''shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles and shall include at least those items specified in SAE Recommended Practice J800c, Motor Vehicle Seat Belt Installation, November 1973.''

As Subaru understands SAE Recommended Practice J800c, it deals primarily with the threading of webbing and location and drilling of anchorage holes and is not relevant here since all affected Subaru vehicles have pre-existing anchorage holes. All of the affected replacement seat belt assemblies are supplied ready for use with fully threaded webbing. Subaru believes that S4.1 (k) is intended to prevent the mismatch of a seat belt assembly in the wrong model vehicle or the wrong seating position and prevent improper installation of a seat belt at the correct position.

Subaru replacement seat belts are offered as exclusive parts, unique to each model, vehicle configuration and seating position. Those parts have specific part numbers identified in Subaru parts catalogs with illustrations. The item numbers attached to each illustration enable the ordering dealer to specify the replacement seat belt assembly he is ordering by referring to the corresponding page which shows the applicable part number, specific vehicle model type, location, applicable model year, etc. When ordering Subaru replacement parts, the dealer must refer to the Subaru parts catalog to identify the ordering part number with the information on the specific vehicle model type, location and model year. Each replacement seat belt assembly is packaged individually with a specific part number label clearly attached on the package to ensure shipping the correct parts. Also, the dealer routinely checks to see that the part he received matches the one he ordered.

There are a variety of significant physical differences among Subaru seat belt assemblies, which include various mounting configuration and location differences; differences in buckle latch plate configuration and retractor locking device; webbing length and housing configuration differences, and differences in motorized seat belt guide track shapes.

Given these variances in physical properties, it is not possible that a mechanic would install a replacement seat belt assembly in the wrong model vehicle or the wrong seating position.

Subaru believes that the ordering and shipping procedures for Subaru replacement seat belts make it highly unlikely that the wrong seat belt assembly will be delivered to a dealer and, should the wrong seat belt be delivered, the above mentioned physical differences make it virtually impossible to install the seat belt in the wrong model vehicle or at an incorrect seating position.

Subaru dealers install replacement seat belt assemblies in accordance with the instructions in Subaru service manuals provided to every Subaru dealer and are widely available to the public and independent repair facilities. Therefore, improper installation of replacement seat belt assemblies is highly unlikely.

In most cases of installation of a replacement seat belt, the installer will first remove the seat belt that needs to be replaced from the vehicle. After removal of the old seat belt, the installer will then reverse the steps of removal to properly locate and install the replacement belt. There is no need to specify instructions for threading the webbing or finding locations for and drilling anchorage holes because replacement seat belt assemblies are furnished ready for installation in the vehicle preexisting anchorage holes with a few simple steps.

FMVSS 209, S4.1 (1) requires instruction addressing the importance of wearing seat belt ''snugly and properly located on the body'' and information about seat belt maintenance (The requirements of S4.1 (1) pertaining to threading and unlocking retractors do not apply to Subaru's seat belt designs). Since Subaru's owner's manual already provides proper usage and maintenance information to the vehicle owner and operator, incorrect usage and maintenance by the vehicle owner and operator is highly unlikely.

Upon discovery of the subject noncompliance, Subaru has taken action to ensure that all replacement seat belt assemblies shipped in the future are packaged with the required installation instructions.

Subaru has corrected all the replacement seat belt assembly inventory for shipment to dealers and will provide additional instruction documents to dealers with inventory subject to the noncompliance.

Replacement seat belt assemblies sold at retail to customers have not resulted in owner complaints as a result of this inconsequential noncompliance.

Interested persons are invited to submit written data, views and arguments on the petition of Subaru, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, National Highway Traffic Safety Administration, Room PL 401, 400 7th Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, a Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 10, 2000.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: March 6, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–5833 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of actions on exemption applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 197, Subpart B), notice is hereby given of the actions on exemption applications in September–December 1999. The modes of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on March 3, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

MODIFICATION EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8554–M	DOT–E 8554	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 173.114a, 173.154, 173.93.	To modify the exemption to allow for the transportation of additional Division 5.1 materials in certain motor vehicles and cargo tanks.
8723–M	DOT–E 8723	Nelson Brothers, Inc., Birmingham, AL.	49 CFR 172.101, 173.242, 173.62, 176.83, 177.848.	To modify the exemption to provide for the addition of IM–101 portable tanks equipped with safety relief devices with lower set point devices that meet IM–102 set point and capacity requirements for bulk shipments of certain blasting agents.
8723–M	DOT–E 8723	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 172.101, 173.242, 173.62, 176.83, 177.848.	To modify the exemption to allow for an additional design for the emulsion tote bin for bulk shipments of certain division 1.5 explosives and/or Division 5.1 oxidizers.
8723–M	DOT–E 8723	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 172.101, 173.242, 173.62, 176.83, 177.848.	To modify the exemption to allow for an additional emulsion tote bin design for shipments of certain Division 1.5 explosives and/or Division 5.1 oxidizers.
8723–M	DOT–E 8723	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 172.101, 173.242, 173.62, 176.83, 177.848.	To modify the exemption to allow for the transportation of additional Division 5.1 materials in certain motor vehicles and portable tanks.
9001–M	DOT–E 9001	UEF Chesterfield Cylinders, Chesterfield, Derbyshire, EN.	49 CFR 173.301, 173.302, 173.304, 175.3, 178.45.	To modify the exemption to allow for an additional Division 2.1 material in non-DOT specification cylinders.
10180–M	DOT–E 10180	Fireboy-Xintex; Grand Rapids, MI.	49 CFR 173.304 (a)(2), 173.34(d).	To modify the exemption to authorize an additional Division 2.2 material in DOT Specification 39 cylinders.
10427–M	DOT–E 10427	Astrotech Space Operations, Inc., Titusville, FL.	49 CFR 173.276, 173.301, 173.302, 173.336, 173.61(d), 177.848(d).	To modify the exemption to delete the midnight to 6:00 a.m. transport requirement for shipment of ''Flight-ready'' spacecraft containing hazardous materials in specially designed non-DOT specification transport containers.
10440–M	DOT–E 10440	MASS Systems, Inc., Baldwin Park, CA.	49 CFR 173.304 (a)(1), 175.3, 178.35(f), 178.47.	To modify the exemption to increase service pressure not to exceed 3100 psig for the welded austenitic stainless steel non-DOT specification cylinder.
10672–M	DOT–E 10672	Burlington Packaging, Inc., Brooklyn, NY.	49 CFR 173.13	To modify the exemption to allow for polyethylene bottles, not exceeding 32 ounces in capacity, in multiple or individual containers for shipment of liquid and solid hazardous materials.
11215–M	DOT–E 11215	Orbital Sciences Corporation, Dulles, VA.	49 CFR 172.101, Special Provision 109, Part 172, Subparts C, D.	To modify the exemption to include new operations origination points and flight path changes for the transportation of certain hazardous materials contained in a rocket configuration secured beneath a L–1011 aircraft.
11432–M	DOT–E 11432	Baker Atlas, Houston, TX	49 CFR 173.61(c), 173.62,E–141, 177.848(g).	To modify the exemption to allow for an alternate lining and relief from certain marking/shipping paper entry requirements for the transportation of Division 1.4 igniters mix-packed with Division 1.4 detonators transported with Class 1 explosives.
11436–M	DOT–E 11436	B&R Specialties, Inc., Staatsburg, NY.	49 CFR 172.101, Col. (8c), 173.197.	To modify the exemption to authorize less than 3 mil. red bags so long as it meets tear-resistance and impact resistance tests for use in the transportation of regulated medical waste.
11506–M	DOT–E 11506	OEA, Inc., Denver, CO	49 CFR 173.301(h), 173.302.	To modify the exemption to include passenger-carrying aircraft as an authorized mode of transportation.
11526–M	DOT–E 11526	BOC Gases, Murray Hill, NJ.	49 CFR 172.302(c), (2), (3), (4), (5), 173.34 (15)(vi), 173.34(e) (1), (3), (4), (8).	To modify the exemption to allow, on exclusive use carrier, condemned cylinders to be transported back to their originating location for gas disposal and cylinder destruction.
11545–M	DOT–E 11545	Bernzomatic, Medina, NY	49 CFR 173.304 (a)(4)(ii), 178.33a–8.	To modify the exemption to allow for the use of an additional container design type for the transportation of certain Division 2.1 materials.
11620–M	DOT–E 11620	CCL Container (Advanced Monobloc Aerosol Div.), Hermitage, PA.	49 CFR 173.306 (3)(ii)	To modify the exemption to allow for the transportation of alternate refrigerants (Division 2.2) in certain DOT Specification 2Q containers.
11667–M	DOT–E 11667	Weldship Corporation, Bethlehem, PA.	49 CFR 173.302(c) (2), (3), (4), 173.34(e).	To authorize the modification of personnel qualifications for retesting of DOT–3AAX and 3T cylinders.
11667–M	DOT–E 11667	Weldship Corporation, Bethlehem, PA.	49 CFR 173.302(c) (2), (3), (4), 173.34(e).	To modify the exemption to allow for the testing of DOT–3AA cylinders and the use of Automatic Sensor Test (AST) method for the transportation of certain compressed gases.

MODIFICATION EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11827–M	DOT–E 11827	NRS America, Inc., White Plains, NY.	49 CFR 173.32b (b)(1), 180.352 (b)(3).	To modify the exemption to add Intermediate Bulk Containers (IBCs) as authorized packaging for the transportation of various classes of hazardous materials.
11856–M	DOT–E 11856	Olin Corporation, Norwalk, CT.	49 CFR 173.304 (a)(2), 173.34(d), 175.3.	To modify the exemption to allow for the addition of a satellite launch ''separation system'' device classed as Division 1.4C.
11865–M	DOT–E 11865	ACCU Chem Conversion, Inc., City of Industry, CA.	49 CFR 174.67(i), (j)	To modify the exemption to authorize the transportation of certain Class 3 materials in rail cars.
11880–M	DOT–E 11880	International Catalyst Corporation, Lloydminister, Alberta, CN.	49 CFR 173.241, 173.242	To modify the exemption to allow for a valve design in the unloading system of the non-specification steel covered hopper railcars for the transportation of Division 4.2 materials.
11914–M	DOT–E 11914	Dae Ryuk Can Co., Ltd., Seoul, SK.	49 CFR 173.304 (d)(3)(ii), 178.33.	To modify the exemption to allow for a design change for an additional non-DOT specification container with a maximum capacity not to exceed 15 cubic inches for the transportation of a Division 2.1 material.
11986–M	DOT–E 11986	U.S. Department of Defense, Falls Church, VA.	49 CFR 176.136(a), 176.136(b).	To modify the exemption to allow for ventilation of cargo holds during maintenance operations.
11990–M	DOT–E 11990	Taylor-Wharton Coyne, Huntsville, AL.	49 CFR 173.201(c), 173.202(c), 173.302 (a)(1), 173.304 (a)(1), 175.3, 178.35–(e), 178.35–(f), 178.36–(a)(1), 178.36(b), 178.36–(g), 178.36–(j), 178.36–(m).	To modify the exemption to allow for design changes of non-DOT specification cylinders for the transportation of certain Division 2.1, 2.2 and Class 3 materials.
12063–M	DOT–E 12063	The Hydrocarbon Flow Specialist, Morgan City, LA.	49 CFR 173.243(c)	To modify the exemption to provide for additional Class 8 hazardous materials in IM 101 tanks equipped with an external bottom discharge valve.
12093–M	DOT–E 12093	Dynatherm Corporation, Inc., Hunt Valley, MD.	49 CFR 173.302 (a)(1), 173.304 (a)(2), 173.34(d), 175.3.	To modify the exemption to allow for design changes of the non-DOT specification containers containing certain Division 2.1, 2.2 and 2.3 liquefied and compressed gases.
12098–M	DOT–E 12098	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 173.302 (a)(1), 175.3, 178.35(e), 178.44.	To modify the exemption to allow a change to the marking requirements of a non-DOT specification cylinder for the transportation of certain Division 2.2 compressed gases.
12123–M	DOT–E 12123	Eastman Chemical Company, Kingsport, TN.	49 CFR 172.203(a), 172.302(c), 174.67(i).	To modify the exemption to authorize PG II and III to include combustible materials and delete Paragraph 7.C.
12284–M	DOT–E 12284	L&D Safety Marking Corp., Barre, VT.	49 CFR 173.242	To reissue the exemption originally issued on an emergency basis for the transportation of certain non-DOT specification cargo tanks used for roadway striping.
12310–M	DOT–E 12310	Five Star Waste, Inc., Lake Worth, FL.	49 CFR 172.101 (8)(b), 172.101 (8)(c), 173.197.	To reissue the exemption originally issued on an emergency basis for the transportation of regulated medical waste in non-DOT specification containers.
12328–M	DOT–E 12328	Certitank LLC, Coatesville, PA.	49 CFR 173.34(1) subparagraphs 1, 2, 3.	To reissue the exemption originally issued on an emergency basis authorizing the rebuilding or modification and sale of certain DOT Specification 4B, 4BA, and 4BW cylinders.
12362–M	DOT–E 12362	U.S. Department of Defense, Falls Church, VA.	49 CFR 176.164(c)	To reissue the exemption originally issued on an emergency basis authorizing limited maintenance and repair operations to vehicles stowed below deck in the same cargo holds as Class 1 explosives aboard LMSR vessels.

NEW EXEMPTIONS

Application no.	Exemption no.	Applicant	Regulation(s) affected	Nature of exemption thereof
12123–N	DOT–E 12123	Eastman Chemical Company, Kingsport, TN.	49 CFR 172.203(a), 172.302(c), 174.67(i).	To authorize railcars to remain connected during unloading of liquid hazardous materials not under pressure, Class 3, 6, 8, and 9 without the physical presence of an unloader and without required marking on shipping paper. (Mode 2.)
12126–N	DOT–E 12126	LaRoche Industries, Inc., Atlanta, GA.	49 CFR 179.13	To authorize the transportation in commerce of rail tank cars containing Class 8 hazardous materials that exceed the quantity limitation presently authorized. (Mode 2.)
12171–N	DOT–E 12171	Arichell Technologies, Inc., West Newton, MA.	49 CFR 173.115(b)	To authorize the transportation in commerce of a Class 2 and Division 2.2 hazardous materials combined with non-toxic hand washing liquid soaps and other liquids. (Modes 1, 2, 3, 4.)
12203–N	DOT–E 12203	Celanese, Ltd., Dallas, TX	49 CFR 177.834 (i)(1)(2)(3).	To authorize MC–330 or MC–331 cargo tanks to remain connected when unloading has been temporarily suspended without the physicial presence of an unloader. (Mode 1.)
12206–N	DOT–E 12206	General Electric Silicones, Waterford, NY.	49 CFR 177.834 (i)(3)	To authorize cargo tanks to remain connected to outlets without attendance of a qualified person during unloading of Class 3 and Class 8 hazardous materials. (Mode 1.)
12230–N	DOT–E 12230	Chemtran Services USA, Inc., Houston, TX.	49 CFR 173.13	To authorize the manufacture, mark, and sell of specially designed combination packagings without required labels, markings, placards, or segregation for use in transporting various classes of hazardous materials. (Modes 1, 2, 3, 4.)
12238–N	DOT–E 12238	Eastman Kodak Co., Rochester, NY.	49 CFR 174.67(i)	To authorize rail cars to remain connected while standing without the physical presence of an unloader. (Mode 2.)
12241–N	DOT–E 12241	Solutia, Inc., St. Louis, MO.	49 CFR 172.101(8C)	To authorize the bulk transportation of Metal catalyst, wetted, Division 4.2 in DOT specification tank trucks. (Mode 1.)
12258–N	DOT–E 12258	JL Shepherd & Associates, San Fernando, CA.	49 CFR 171.18, 171.19, 171.20.	To authorize the transportation in commerce of a specially designed device containing Radioactive material, Class 7. (Mode 1.)
12262–N	DOT–E 12262	Sporting Arms & Ammunition Manuf. Instit. (SAAMI) Kennett Square, PA.	49 CFR 173.61(a)	To authorize the transportation in commerce of non-hazardous materials and explosives within the same packaging. (Modes 1, 2, 3, 4.)
12266–N	DOT–E 12266	Toyota Motor Sales, U.S.A., Inc., Torrance, CA.	49 CFR 172.301(c), 173.4 (a)(10), 173.4 (a)(4).	To authorize the transportation in commerce of small quantities of flammable liquids, Class 3, in non-refillable containers enclosed in sealed polyethylene bags with overpacks. (Mode 1.)
12278–N	DOT–E 12278	Morton International, Chicago, IL.	49 CFR 173.243	To authorize the transportation in commerce of composite intermediate bulk containers meeting UN design type 31HA1 for the shipment of Thioglycol, classed as a Division 6.1, PG II material. (Modes 1, 2.)
12286–N	DOT–E 12286	FMC Corporation, Philadelphia, PA.	49 CFR 180.509	To extend the retest period for DOT–111A60W7 tank cars in dedicated hydrogen peroxide service (Division 5.1). (Mode 2.)
12288–N	DOT–E 12288	Huntsman Chemical Company, West Footscray VIC 3012, AU.	49 CFR 178.245–7(a)	To authorize the transportation in commerce of Ethyl chloride, Division 2.1, in non-DOT specification steel portable tanks permanently fitted within an ISO frame. (Modes 1, 2, 3.)
12289–N	DOT–E 12289	Arbel Fauvet Rail (AFR), Cedex, FR.	49 CFR 178.245–1(a)	To authorize the manufacturing, marking sale and use of DOT Specification 51 steel portable tanks permanently enclosed within a ISO frame for use in transporting Division 2.1 and 2.2 materials as presently authorized. (Modes 1, 2, 3.)
12295–N	DOT–E 12295	Uniroyal Chemical Co., Middlebury, CT.	49 CFR 172.101, SP T15	To authorize the transportation in commerce of a Division 6.1 material in IM-tanks equipped with bottom outlets. (Modes 2, 3.)
12299–N	DOT–E 12299	Minnesota School of Diving, Inc., Brainerd, MN.	49 CFR 177.870(e)	To authorize the transportation in commerce of Division 2.2, compressed air in DOT-Specification scuba cylinders that exceed the quantity limitations to be transported aboard passenger-carrying vehicles. (Mode 1.)

NEW EXEMPTIONS—Continued

Application no.	Exemption no.	Applicant	Regulation(s) affected	Nature of exemption thereof
12306–N	DOT–E 12306	Griffin Pipe Products Co., Lynchburg, VA.	49 CFR 172, Subparts C, F.	To authorize the transportation of closed head 1A1 55 gallon drums from a storage yard into the main plant via fork trucks, without required bill of lading or placards. (Mode 1.)
12317–N	DOT–E 12317	Archimica, Gainesville, FL	49 CFR 173.243(c)	To authorize the transportation in commerce of Class 3 material in DOT–57 portable tanks not presently authorized. (Modes 1, 3.)
12319–N	DOT–E 12319	BFI-Atlanta, GA	49 CFR 178.503 (a)(9)(ii)	To authorize the transportation in commerce of 1H2 containers that have not been properly marked and labelled for reuse in transporting regulated medical waste. (Mode 1).
12324–N	DOT–E 12324	STC Technologies, Inc., Bethlehem, PA.	49 CFR 171.11 (d)(14), 171.12 (b)(17), 173.301(e) & (f), 173.304 (a)(1) & (a)(3).	To authorize the one-time transportation in commerce of a specially designed device containing small quantities of Division 2.1 gases. (Modes 1, 2, 3, 4).
12335–N	DOT–E 12335	Baker Hughes, Houston, TX.	49 CFR 173.62(c), PM E–139, PPR 1.	To authorize an alternative packaging method for use in transporting Cord, detonating, Division 1.1D and 1.4D. (Modes 1, 3).
12358–N	DOT–E 12358	BIC Corporation, Milford, CT.	49 CFR 172.400	To authorize the transportation in commerce of Lighters or Lighter refills, Division 2.1, without required labelling when packaged in accordance with 49 CFR. (Mode 1).

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 7657–M ..	DOT–E 7657 ...	Welker Engineering Company, Sugar Land, TX.	49 CFR 173.302 (a)(1), 173.304 (a)(1), 173.304 (b)(1), 175.3, 178.42.	To modify exemption to authorize compressed gas, flammable, n.o.s. (Crude oil under pressure) as an additional commodity contained in a non-DOT specification stainless steel cylinder. (Modes 1, 2, 3, 4.)
EE 11459–M	DOT–E 11459	Quality Containment Company, Owensboro, KY.	49 CFR 173.34, 173.302, 173.304.	To modify the exemption to provide for cargo vessel as an additional mode of transportation to be used in transporting damaged sulfur dioxide cylinders. (Mode 1.)
EE 12299–M	DOT–E 12299	Minnesota School of Diving, Inc., Brainerd, MN.	49 CFR 177.870 (e)	To modify Paragraph 7.c. To authorize the cylinders to be charged to pressure not exceeding 500 psig that are on the return trip from original destination. (Mode 1.)
EE 12344–N	DOT–E 12344	DXI Industries, Inc., Houston, TX.	49 CFR 173.31 (b)(2)	To authorize the transportation of Chlorine (Division 2.3) in a DOT specification 106A500X multi-unit tank car equipped with a Chlorine Institute ''B'' Kit from Austin, Texas to Houston, Texas. (Mode 1.)
EE 12345–N	DOT–E 12345	United Parcel Service, Louisville, KY.	49 CFR 172.316 (a)(1)	Request for an emergency exemption to authorize shipment of ORM–D materials by air without the authorized markings on the packagings. (Mode 4.)
EE 12349–N	DOT–E 12349	Reilly Industries, Inc., Indianapolis, IN.	49 CFR 172.302(c), 173.24a(d).	Request for an emergency exemption for a one time shipment of 80 55 gallon drums that do not meet the requirements in 173.24a(d). (Modes 1, 3.)
EE 12352–N	DOT–E 12352	Elf Atochem North America, Inc., Philadelphia, PA.	49 CFR 171.12 (b)(8)	Request for an emergency exemption from 171.12 (b)(8), as modified by a final rule under HM206D, which requires 2.3 materials and PIH materials that are imported or exported to be labeled with DOT's new toxic Gas or PIH labels instead of the corresponding labels required by the IMDG. (Modes 2, 3.)
EE 12362–N	DOT–E 12362	U.S. Department of the Navy, Washington, DC.	49 CFR 176.164(c)	Emergency exemption application requesting authorization for limited maintenance and repair operations to vehicles stowed below deck in the same cargo holds as class 1 explosive aboard LMSR vessels. (Mode 3.)
EE 12364–N	DOT–E 12364	American Red Cross Blood Services-NY/PA region, Syracuse, NY.	49 CFR 173.403, 173.413, 173.416, 173.467.	Request for an emergency exemption to transport 2 non-DOT specification packagings which contain RAM. (Mode 1.)
EE 12366–N	DOT–E 12366	American Red Cross Blood Service (AL Region), Birmingham, AL.	49 CFR 173.403, 173.413, 173.416, 173.467.	Request for an emergency exemption to transport RAM in non-DOT specification packages. (Mode 1.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12367–N	DOT–E 12367	Airgas-Nor Pac, Inc., Portland, OR.	49 CFR 173.24(b)	Request for an emergency exemption to transport a leaking cylinder fitted with a B chemical kit. The cylinder contains anhydrous ammonia. (Mode 1.)
EE 12375–N	DOT–E 12375	Alexander Chemical Corp., LaPorte, IN.	49 CFR 173.24	Request for an emergency exemption to transport a leaking chlorine cylinder that has been fitted with an ''A Kit''. (Mode 1.)
EE 12376–N	DOT–E 12376	Biotech Research Labs Inc., Gaithersburg, MD.	49 CFR 173.196, 178.609	Request for emergency exemption to move 115 freezers that contain specimen collections involved in novel drug and vaccine therapies. (Mode 1.)
EE 12384–N	DOT–E 12384	Oilair Hydraulics Inc., Houston, TX.	49 CFR 173.302 (a)(1), 175.3.	Request for an emergency exemption to transport non-flammable gas in a package (accumulator) whic is not authorized under the HMR. (Modes 1, 2, 3, 4.)
EE 12387–N	DOT–E 12387	DXI Industries, Houston, TX.	49 CFR 173.31 (B)(2)	Request for an emergency exemption to transport a DOT spec tank car tank that has a leading valve fitted with a kit attached. (Mode 1.)

DENIALS

11699–N	Request by GEO Specialty Chemicals Bastrop, LA to authorize the installation of a 1″ plugcock value on the air inlet line located on the dome of rail cars that are not equipped with dome vents or safety relief valves that are used for transporting aluminum sulfate, solution, Division 2.3 denied September 13, 1999.
12249–N	Request by Breed Technologies, Inc., Lakeland, FL to authorize the manufacture, mark and sale DOT-Specification 39 compressed gas cylinders (pressure vessels) for use as components of automobile vehicle safety systems with relief from the 30 second holdtime required at test pressure denied October 27, 1999.
12282–N	Request by Defense Technology Corp., Casper, WY to authorize the manufacture, marking and sale of compressed gas, Division 2.2, in non-DOT specification cylinders comparable to DOT-Specification 39 denied October 27, 1999.
12291–N	Request by Jean Phillippe Fragrances, Inc., New York, NY to authorize the transportation in commerce of aerosol fragrance products not to exceed 5 ounces to be transported in aluminum containers with overpack denied October 28, 1999.
12300–N	Request by Container Products Corp., Wilmington, NC to authorize the manufacture, marking and sale of intermediate bulk containers which exceed the quantity limitations presently authorized for use in transporting Package Groups II and III liquid hazardous materials and Packing Groups I, II, & III solid hazardous materials denied September 29, 1999.
23059–N	Request by Fragrance Materials Association of the U.S., Washington, DC to authorize the transportation of samples of flavor and fragrance materials in Class 3, 9 and Division 6.1 to be transported without required marking, labeling and shipping papers denied September 16, 1999.
12305–P	Request by Flavor & Extract Manufacturers', Washington, DC to authorize the transportation of samples of flavor and fragrance materials in Class 3, 9 and Division 6.1 to be transported without required marking, labeling and shipping papers denied September 16, 1999.
12327–N	Request by International Federation of Inspection Agencies, Houston, TX to authorize the transportation in commerce of Packing Group 1 material in non-bulk glass containers denied September 16, 1999.
12347–N	Request by Strainrite Corporation, Lewiston, ME to authorize the manufacture, mark and sale of non-DOT specification polyethylene flexible boxes for materials currently authorized in UN 4H2 boxes denied September 20, 1999.
12365–N	Request by Merck KGaA Darmstradt, GR to authorize the manufacture, mark and sale of non-DOT specification polyethylene flexible boxes for materials currently authorized in UN 4H2 boxes denied November 8, 1999.
12374–N	Request by B & K Equipment Co., Lansing, IL to authorize the manufacture, mark and sale of non-DOT specification polyethylene flexible boxes for materials currently authorized in UN 4H2 boxes denied December 10, 1999.

[FR Doc. 00–5808 Filed 3–8–00; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date of action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application.
M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on February 23, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11767–N	Ausimont USA, Inc., Thorofare, NJ	1	03/31/2000
11862–N	The BOC Group, Murray Hill, NJ	4	03/31/2000
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	03/31/2000
12106–N	Air Liquide America Corporation, Houston, TX	4	03/31/2000
12125–N	Mayo Foundation, Rochester, MN	4	03/31/2000
12138–N	Gas Supply Resources, Inc., Albany, NY	4	03/31/2000
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	03/31/2000
12146–N	Luxfer Gas Cylinders, Riverside, CA	1	03/31/2000
12148–N	Eastman Kodak Company, Rochester, NY	4	03/31/2000
12158–N	Hickson Corporation, Conley, GA	4	03/31/2000
12181–N	Aristech, Pittsburgh, PA	4	03/31/2000
12205–N	Independent Chemical Corp., Glendale, NY	4	04/28/2000
12248–N	Ciba Specialty Chemicals Corp., High Point, NC	4	04/28/2000
12269–N	Solutia, Inc., St. Louis, MO	4	04/28/2000
12277–N	The Indian Sugar & General Engineering Corp. ISGE, Haryana, IX	1	04/28/2000
12280–N	Combined Tactical Systems, Inc., Jamestown, PA	4	04/28/2000
12281–N	ABS Group, Inc., Houston, TX	4	04/28/2000
12290–N	Savage Industries, Inc., Pottstown, PA	4	04/28/2000
12292–N	Westway Trading Corporation, New Orleans, LA	4	04/28/2000
12293–N	Intercontinental Packaging Corp., Tuckahoe, NY	4	03/31/2000
12297–N	Applied Companies, Valencia, CA	4	04/28/2000
12301–N	Niklor Chemical Co., Long Beach, CA	4	03/31/2000
12307–N	Kern County Dept. of Weights & Measures, Bakersfield, CA	4	04/28/2000
12316–N	The Dow Chemical Co., Channahon, IL	4	04/28/2000
12325–N	Lifeline Technologies, Inc., Sharon Hill, PA	4	04/28/2000
12332–N	Automotive Occupant Restraints Council, Lexington, KY	4	04/28/2000
12333–N	BFI, Atlanta, GA	4	04/28/2000
12336–N	AC Plastiques Canada (1992), Inc., Les Cedres, Quebec, CA	1	04/28/2000
12338–N	Aeronex, Inc., San Diego, CA	4	04/28/2000
12339–N	BOC Gases, Murray HIll, NJ	4	04/28/2000
12343–N	City Machine & Welding, Inc. of Amarillo, Amarillo, TX	1	04/28/2000
12350–N	BAC Technologies, Ltd., West Liberty, OH	4	04/28/2000
12360–N	EMCORE Corp., Somerset, NJ	4	04/28/2000
12361–N	PurePak Technology Corp., Gilbert, AZ	4	03/31/2000

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
6611–M	Gardner Cryogenics, Lehigh Valley, PA	1	03/31/2000
6765–M	Gardner Cryogenics, Lehigh Valley, PA	1	03/31/2000
7277–M	Structural Composites Industries, Pomona, CA	4	03/31/2000
8556–M	Gardner Cryogenics, Lehigh Valley, PA	4	03/31/2000
8723–M	Buckley Powder Company, Englewood, CO	4	03/31/2000
9266–M	ERMEWA, Inc., Houston, TX	4	03/31/2000
10480–M	Gardner Cryogenics, Lehigh Valley, PA	1	03/31/2000
10656–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	03/31/2000
10672–M	Burlington Packaging, Inc., Brooklyn, NY	4	03/31/2000
10821–M	BFI Waste Systems of North America, Inc., Atlanta GA	4	03/31/2000
10921–M	The Proctor & Gamble Company, Cincinnati, OH	4	03/31/2000
10928–M	Matheson Tri-Gas, Parsippany, NJ	4	04/28/2000
10929–M	Consolidated Rail Corporation, Philadelphia, PA	4	03/31/2000
10929–M	Matheson Tri-Gas, Parsippany, NJ	4	03/31/2000
10945–M	Structural Composites Industries (SCI), Pomona, CA	4	03/31/2000
10945–M	Structural Composites Industries, Pomona, CA	4	03/31/2000
10962–M	International Compliance Center, Mississauga ON L4Z 1X8, CA	4	03/31/2000
10977–M	Federal Industries Corporation, Plymouth, MN	4	03/31/2000
10987–M	Air Products and Chemicals, Inc., Allentown, PA	4	03/31/2000
11186–M	Cryenco, Inc., Denver, CO	4	03/31/2000
11248–M	HAZMATPAC, Houston, TX	4	03/31/2000
11380–M	Baker Atlas, Houston, TX	4	02/28/2000

MODIFICATIONS TO EXEMPTIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11406–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	04/28/2000
11769–M	Great Western Chemical Company, Portland, OR	4	04/28/2000
11769–M	Great Western Chemical Company, Protland, OR	4	02/28/2000
11903–M	Comptank Corporation, Bothwell, Ontario, CA	4	04/28/2000
11942–M	Niklor Chemical Company, Long Beach, CA	4	04/28/2000
12069–M	Compagnie des Containers Reservoirs, Paris, FR	4	03/31/2000
12074–M	Van Hool NV, B–2500 Lier Koningshooikt, BG	1	04/28/2000
12178–M	STC Technologies, Inc., Bethlehem, PA	1	04/28/2000

[FR Doc. 00–5807 Filed 3–8–00; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33556 (Sub–No. 4.)] [1]

Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company (General Oversight)

ACTION: Decision No. 1; Notice of general oversight proceeding, and request for comments from interested persons on the progress of implementation of the CN/IC transaction and the workings of the various conditions imposed.

SUMMARY: In 1999, in *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company*, STB Finance Docket No. 33556, Decision No. 37 (STB served May 25, 1999) (*CN/IC Dec. No. 37*), we approved, subject to various conditions (including a 5-year general oversight condition): (1) the acquisition, by Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated (collectively, CN), of control of Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central & Pacific Railroad Company, and Cedar River Railroad Company (collectively, IC), and (2) the integration of the rail operations of CN and IC. We are now instituting a proceeding to implement the general oversight condition imposed in *CN/IC Dec. No. 37*. We are requiring Canadian National Railway Company (CNR) to file a progress report respecting the CN/IC transaction and to make certain data available to interested persons. We are inviting interested persons to submit comments on the progress of implementation of the CN/IC transaction and the conditions we imposed.

DATES: CNR must file a progress report by July 3, 2000, and must make CN/IC's 100% traffic waybill tapes available to interested persons by July 17, 2000. Comments of interested persons will be due on August 18, 2000. Replies will be due on September 5, 2000.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33556 (Sub-No. 4) and must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Finance Docket No. 33556 (Sub-No. 4), 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each document filed in this proceeding must be sent to CNR's representative: Paul A. Cunningham, HARKINS CUNNINGHAM, 801 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004–2664.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties must also submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), one electronic copy of each such document (e.g., textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence) and must clearly label pleadings and attachments and the corresponding disks/CDs with an identification acronym and pleading number.[2] Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in some version of Lotus, Excel, or Quattro Pro. Parties may individually seek a waiver from the disk/CD requirement.

FOR FURTHER INFORMATION, CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: In *CN/IC Dec. No. 37*, we established general oversight for a period of up to 5 years so that we might assess the competitiveness of service provided by CN/IC and KCS under the Alliance Agreement [3] and the effectiveness of the various conditions we imposed. We reserved jurisdiction to implement the oversight condition and, if necessary, to impose additional conditions and/or to take other action if, and to the extent, we determined that it was necessary to impose additional conditions and/or to take other action to address matters respecting the CN/IC control transaction, including without limitation: (a) Concerns regarding the operation of the Alliance Agreement, particularly with respect to ongoing competition within the Baton Rouge-New Orleans corridor; (b) concerns of North Dakota grain shippers with respect to the Chicago gateway; (c) concerns with respect to investment in and operation of the Detroit River Tunnel; (d) concerns with respect to any merger-related link to any unfair pricing practices in the lumber industry; (e) concerns with respect to lack of appropriate labor protective conditions if unauthorized control of CN/IC and KCS should occur; and (f) any necessary monitoring of our environmental mitigating conditions. *See CN/IC Dec. No. 37*, slip op. at 8 (item 8), 39–40, 56 (ordering paragraph 1).

We are now instituting this proceeding to implement the general oversight condition imposed in *CN/IC*

[1] A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33556.

[2] A copy of each such disk or CD should be provided to any other party upon request.

[3] In *CN/IC Dec. No. 37*: The Kansas City Southern Railway Company and Gateway Western Railway Company, and all other wholly owned (directly or indirectly) subsidiaries of Kansas City Southern Industries, Inc., were referred to collectively as KCS; and a settlement agreement entered into on April 15, 1998, by CN, IC, and KCS was variously referred to as the Alliance Agreement or, on occasion, the CN/IC/KCS Alliance Agreement.

Dec. No. 37.[4] We invite information from interested persons as to both the status of implementation of the CN/IC transaction and the effects of the various conditions we imposed.

We are requiring CNR to file, by July 3, 2000, a progress report respecting implementation of the CN/IC transaction. This progress report should contain an in-depth analysis of implementation of the transaction and of the workings of the various conditions. We are further requiring CNR to make CN/IC's 100% traffic waybill tapes available by July 17, 2000, to those interested persons who have entered the appropriate confidentiality agreement pursuant to the protective order discussed below. These tapes should include the most up-to-date data then accessible by CNR.

We are directing that interested persons submit, by August 18, 2000, any comments respecting the progress of implementation of the CN/IC transaction and the workings of the various conditions we imposed. Replies to comments must be submitted by September 5, 2000.

Protective Order. Parties may submit filings (including electronic submissions contained on disks and CDs), as appropriate, under seal marked Confidential or Highly Confidential pursuant to the protective order entered in STB Finance Docket No. 33556 in Decision No. 1 (served Feb. 26, 1998), as modified in certain respects in Decision No. 36 (served Apr. 6, 1999).[5] Waybill files made available to interested persons will be subject to this protective order.

Service List. A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33556. This decision will serve as notice that persons who were parties of record in STB Finance Docket No. 33556 will not automatically be placed on the service list as parties of record in the STB Finance Docket No. 33556 (Sub-No. 4) general oversight proceeding. Any persons interested in being on the STB Finance Docket No. 33556 (Sub-No. 4) service list and receiving copies of CNR's filings relating to the general oversight proceeding must send us written notification with copies to CNR's representative.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: March 3, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–5809 Filed 3–8–00; 8:45 am]

BILLING CODE 4915–00–P

[4] We are establishing a procedural schedule similar to that imposed in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (General Oversight)*, STB Finance Docket No. 32760 (Sub-No. 21).

[5] Parties submitting filings under seal will be expected to file redacted versions that will be placed in the public docket.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Forms 8109, 8109–B, and 8109–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 8109 and 8109–B, Federal Tax Deposit Coupon, and Form 8109–C, FTD Address Change.

DATES: Written comments should be received on or before May 8, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Federal Tax Deposit Coupon (Forms 8109 and 8109–B) and FTD Address Change (Form 8109–C).

OMB Number: 1545–0257.

Form Numbers: 8109, 8109–B, and 8109–C.

Abstract: Federal tax deposit coupons (Forms 8109 and 8109–B) are used by taxpayers to deposit certain types of taxes at authorized depositaries or in certain Federal Reserve Banks. Form 8109–C, FTD Address Change, is used to change the address on the FTD coupon. The information on the deposit coupon is used by the IRS to monitor compliance with the deposit rules and insure that taxpayers are depositing the proper amounts within the proper time periods with respect to the different taxes imposed by the Internal Revenue Code.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Responses: 62,513,333.

Estimated Time Per Respondent: 2 minutes.

Estimated Total Annual Burden Hours: 1,841,607.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 2, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5819 Filed 3–8–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–G, Certain Government and Qualified State Tuition Program Payments.

DATES: Written comments should be received on or before May 8, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Government and Qualified State Tuition Program Payments.

OMB Number: 1545–0120.

Form Number: 1099–G.

Abstract: Form 1099–G is used to report government payments such as unemployment compensation, state and local income tax refunds, credits, or offsets, discharges of indebtedness by the Federal Government, taxable grants, subsidy payments from the Department of Agriculture, and qualified state tuition program payments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal, state, local or tribal governments.

Estimated Number of Responses: 55,746,627.

Estimated Time Per Response: 12 min.

Estimated Total Annual Burden Hours: 11,149,325.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 29, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5820 Filed 3–8–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 712

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 712, Life Insurance Statement.

DATES: Written comments should be received on or before May 8, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Life Insurance Statement.

OMB Number: 1545–0022.

Form Number: 712.

Abstract: Form 712 provides taxpayers and the IRS with information to determine if insurance on the decedent's life is includible in the gross estate and to determine the value of the policy for estate and gift tax purposes. The tax is based on the value of the life insurance policy.

Current Actions: There are no changes being made to Form 712 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 60,000.

Estimated Time Per Response: 17 hrs., 56 min.

Estimated Total Annual Burden Hours: 1,076,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are

invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 1, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5821 Filed 3–8–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 12575 and Form 12575–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 12575, Notice of Fiduciary Relationship—Illinois Type Land Trust, and Form 12575–A, Notice of Fiduciary Relationship—Illinois Type Land Trust (Part III—Continuation Sheet).

DATES: Written comments should be received on or before May 8, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 12575, Notice of Fiduciary Relationship—Illinois Type Land Trust; Form 12575-A, Notice of Fiduciary Relationship—Illinois Type Land Trust (Part III—Continuation Sheet).

OMB Number: 1545–1683.

Form Number: 12575 and 12575–A.

Abstract: Forms 12575 and 12575–A will be used by trustees of Illinois Land Trusts to report the creation of such trusts and any changes to the trust such as the adding or removing of a beneficiary or a change in the power of direction of the trust.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 12,500.

Estimated Time Per Response: 6 minutes.

Estimated Total Annual Burden Hours: 1,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 2, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5822 Filed 3–8–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine non-Federal nursing home or the residential care home qualification for providing care to veteran patients.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 8, 2000.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's

functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: a. Application for Furnishing Nursing Home Care to Beneficiaries of Veterans Affairs, VA Form 10–1170.

b. Residential Care Home Program—Sponsor Application, VA Form 10–2407.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA medical centers and VA Central Office use the information on the forms to determine non-Federal nursing home or the residential care home qualification for providing care to veterans.

Affected Public: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Annual Burden: a. VA Form 10–1170–167 hours.

b. VA Form 10–2407–83 hours.

Estimated Average Burden Per Respondent: a. VA Form 10–1170–20 minutes.

b. VA Form 10–2407–5 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: a. VA Form 10–1170–500.

b. VA Form 10–2407–1,000.

By direction of the Secretary.

Dated: February 16, 2000.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–5825 Filed 3–8–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine if spouses, surviving spouses, and children of veterans are eligible for Dependents' Educational Assistance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 8, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0098'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Survivors' and Dependents' Educational Assistance (Under Provisions of Chapter 35, Title 38, U.S.C.), VA Form 22–5490.

OMB Control Number: 2900–0098.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–5490 serves as an application for Dependents' Educational Assistance (DEA). Spouses, surviving spouses, and children of veterans must submit evidence to establish eligibility and entitlement to DEA under Title 38, U.S.C., 3513. VA uses the information to determine if an individual claimant qualifies for DEA benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,050 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Once—Initial Application.

Estimated Number of Respondents: 20,100.

Dated: February 16, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–5826 Filed 3–8–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0198]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine if a veteran is eligible for clothing allowance payment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 8, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0198'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Annual Clothing Allowance, VA Form 21–8678.

OMB Control Number: 2900–0198.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8678 is used by veterans to apply for clothing allowance. Without this information, VA would be unable to determine eligibility for this benefit.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,120 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 6,720.

Dated: February 16, 2000.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–5827 Filed 3–9–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the following meetings to be held from 8 am to 5 pm as indicated below:

Subcommittee for	Date	Location
Aging and Clinical Geriatrics	March 20, 2000	Washington Plaza
Surgery	March 20, 2000	The Double Tree
Nephrology	March 22, 2000	Washington Plaza
Neurobiology-C	March 23, 2000	Holiday Inn Central
Respiration	March 27, 2000	Holiday Inn Central
Oncology	March 27–28, 2000	Holiday Inn Central
Cardiovascular Studies	March 31, 2000	Holiday Inn Central
Immunology	April 3–4, 2000	The Double Tree
Hematology	April 6, 2000	Holiday Inn Downtown
Neurobiology-D	April 6–7, 2000	Radisson Barcelo
Epidemiology	April 10, 2000	Holiday Inn Central
Gastroenterology	April 10–11, 2000	Holiday Inn Central
General Medical Science	April 13–14, 2000	Holiday Inn Central
Mental Hlth & Behavioral Sciences	April 13–14, 2000	Holiday Inn Central
Endocrinology	April 17–18, 2000	Washington Plaza
Infectious Diseases	April 17–18, 2000	Washington Plaza
Alcohol and Drug Dependence	April 18, 2000	Washington Plaza
Medical Research Service Merit Review Committee	June 1, 2000	Holiday Inn Central

The addresses of the hotels are:

The Double Tree, 1515 Rhode Island Avenue, NW, Washington, DC 20005

Holiday Inn Central, 1501 Rhode Island Avenue, NW, Washington, DC 20005

Holiday Inn Downtown, 1155 14th Street, NW, Washington, DC 20005

Radisson Barcelo Hotel, 2121 P Street, NW, Washington, DC 20037

Washington Plaza, 10 Thomas Circle, NW, Washington, DC 20005

These subcommittee meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meetings involves discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the subcommittee meetings, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these subcommittee meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC (202) 408–3630.

Dated: March 2, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–5717 Filed 3–8–00; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Health Services Research and Development Service, Notice of Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Pub. L. 92–463, that a meeting of the Scientific Review and Evaluation Board for Health Services Research and Development Service will be held at The New Otani Hotel and Garden, 120 South Los Angeles Street, Los Angeles, CA, June 21 through 24, 2000. On June 21, the meeting will begin at 7:00 p.m. until 9:00 p.m. and on June 22 through 24 from 8:00 a.m. until 5:00 p.m. The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care services and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are prepared for the Chief Research and Development Officer.

This meeting will be open to the public at the start of the June 21 session for approximately one half-hour to cover administration matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols and similar documents. During the portion of the meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to frustrate significantly implementation of proposed agency action regarding such research projects). As provided by the subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact the Assistant Director, Scientific Review (124F), Health Services Research and Development Service, Department of Veterans Affairs, 1400 I Street, N.W., Suite 780, Washington, D.C., at least five days before the meeting. For further information, call (202) 408–3665.

Dated: March 2, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–5718 Filed 3–8–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 65, No. 47
Thursday, March 9, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–29]

Establishment of Class E Airspace; Atmore, AL

Correction

In rule document 00–3979 beginning on page 8270 in the issue of Friday, February 18, 2000, make the following correction:

§71.1 [Corrected]

1. On page 8271, in the second column, in §71.1, in the 10th line, ''ES'' should read ''E5''.

2. On the same page, in the same column, in the same section, in the 12th line, ''(Lat. 31°26′58″'' should read ''(Lat. 31°00′58″''.

[FR Doc. C0–3979 Filed 3–8–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
March 9, 2000

Part II

Department of Housing and Urban Development

24 CFR Part 81

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac); Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 81

[Docket No. FR–4494–P–01]

RIN 2501–AC60

HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: Through this proposed rule, the Department of Housing and Urban Development is soliciting comments on proposed new housing goal levels for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Government Sponsored Enterprises, or GSEs) for calendar years 2000 through 2003. In accordance with the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, this rule proposes new goal levels for the purchase by Fannie Mae and Freddie Mac of mortgages financing low-and moderate-income housing, special affordable housing, and housing in central cities, rural areas, and other underserved areas. This rule also proposes to clarify HUD's guidelines for counting different types of mortgage purchases toward those goals, and to provide greater public access to certain types of mortgage data on the GSEs' mortgage purchases in HUD's public use database. This rule also solicits public comments on several other issues related to the housing goals.

While Fannie Mae and Freddie Mac have been successful in providing stability and liquidity in the market for certain types of mortgages, their share of the affordable housing market is substantially smaller than their share of the total conventional conforming mortgage market. There are several reasons for these disparities, related both to the GSEs' purchase and underwriting guidelines and to their relatively low level of activity in specific markets that serve lower-income families, including small multifamily rental properties, manufactured housing, single family owner-occupied rental properties, and seasoned affordable housing mortgages. As the GSEs continue to grow their businesses, the proposed new goals will provide strong incentives for the two enterprises to more fully address the housing finance needs for very low-, low-and moderate-income families and residents of underserved areas and thus, more fully realize their public purposes.

DATES: Comments must be submitted on or before: May 8, 2000.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Written comments may also be provided electronically to the following e-mail address: hsg-gse@hud.gov All communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Janet A. Tasker, Director, Office of Government Sponsored Enterprises Oversight, Room 6182, telephone (202) 708–2224. For questions on data or methodology, contact John L. Gardner, Director, Financial Institutions Regulation Division, Office of Policy Development and Research, Room 8234, telephone (202) 708–1464. For legal questions, contact Kenneth A. Markison, Assistant General Counsel for Government Sponsored Enterprises/RESPA, Office of the General Counsel, Room 9262, telephone (202) 708–3137. The address for all of these persons is: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Persons with hearing and speech impairments may access the phone numbers via TTY by calling the Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION:

I. General

A. Purpose

Through this proposed rule, the Department of Housing and Urban Development (HUD or the Department) is soliciting comments on proposed new housing goal levels for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Government Sponsored Enterprises, or GSEs) for calendar years 2000 through 2003. The housing goals will be phased in beginning in calendar year 2000 and will be fully implemented by calendar year 2001. In accordance with the Federal Housing Enterprises Financial Safety and Soundness Act of 1992,[1] which requires the GSEs to facilitate the financing of affordable housing for low- and moderate-income families and underserved neighborhoods and requires the Department to establish housing goals; this rule proposes increased housing goal levels for the purchase by Fannie Mae and Freddie Mac of mortgages financing low- and moderate-income housing, special affordable housing, and housing in central cities, rural areas, and other underserved areas. This rule also proposes to clarify HUD's guidelines for counting different types of mortgage purchases toward those goals, and to provide greater public access to certain types of mortgage data on the GSEs' mortgage purchases in HUD's public use database. This rule also solicits public comments on several other issues related to the housing goals.

While Fannie Mae and Freddie Mac have been successful in providing stability and liquidity in the market for certain types of mortgages, their share of the affordable housing market is substantially smaller than their share of the total conventional conforming mortgage market. The GSEs' mortgage purchases accounted for 39 percent of all owner and rental housing units that were financed in the market during 1997, but their purchases that qualified for the Low- and Moderate-Income Housing Goal represented only 30 percent of the low- and moderate-income housing market and their Special Affordable Housing Goal (directed toward very low- and low-income families) qualifying mortgage purchases represented only 24 percent of that market. There are several reasons for these disparities, related both to the GSEs' purchase and underwriting guidelines and to their relatively low level of activity in specific markets that serve lower-income families, including small multifamily rental properties, manufactured housing, single family owner-occupied rental properties, and seasoned affordable housing mortgages. As the GSEs continue to grow their businesses, the proposed new goals will provide strong incentives for the two enterprises to more fully address the housing finance needs of very low-, low- and moderate-income families and the residents of underserved areas, and,

[1] 12 U.S.C. 4501 et seq.; Pub. L. 102–550, approved Oct. 28, 1992.

thus, more fully realize their public purposes.

In determining the appropriate level of the housing goals, HUD must consider six statutory factors: national housing needs; economic, housing and demographic conditions; performance and effort of Fannie Mae and Freddie Mac toward achieving the housing goals in previous years; the size of the conventional mortgage market serving the targeted population or areas relative to the size of the overall conventional mortgage market; the ability of the GSEs to lead the industry in making mortgage credit available for the targeted population or areas; and the need to maintain the sound financial condition of the GSEs.

Based on consideration of all the statutory factors, HUD is proposing increases to the housing goal levels. In summary, the shares of the mortgage markets that qualify for each of the housing goals are higher than the current goal levels. The proposed goal levels will close the gap between the GSEs' performance and the opportunities available in the primary mortgage market. The proposed goal levels, while consistent with the Department's estimate of the market share for each goal, are higher than the GSEs' current level of performance, yet they would be reasonable even under economic conditions more adverse than have existed recently. There are a number of relatively untapped segments of the multifamily, single family owner-occupied, and single family rental markets where the GSEs might play an enhanced role and thereby increase their shares of targeted loans and their performance on the housing goals. These areas include small multifamily mortgage loans, multifamily rehabilitation loans, single family rental property loans, manufactured housing loans, A-minus mortgage loans, and affordable seasoned loan purchases. The proposed goal levels will challenge both Fannie Mae and Freddie Mac to increase their purchases of mortgages for lower-income families and for properties in underserved areas, and to further their efforts to meet the affordable housing needs of lower-income families, minorities, and residents of underserved areas, who continue to face problems obtaining mortgage credit and who would benefit from a more active and focused secondary market. The Department's analyses indicate that there are substantial opportunities in the mortgage market where the GSEs may purchase additional mortgages that qualify for one or more of the housing goals. The GSEs have the financial and operational capacity to improve their affordable housing performance and lead the industry in supporting mortgage lending for families and neighborhoods targeted by the housing goals. Further, the GSEs themselves have indicated that they want to increase their market presence in many of the business areas identified above.

The current housing goal levels are 42 percent for the Low- and Moderate-Income Housing Goal, 24 percent for the Geographically Targeted Goal, and 14 percent for the Special Affordable Housing Goal. The Special Affordable Housing Goal includes a subgoal for mortgage purchases financing dwelling units in multifamily housing which is 0.8 percent of the dollar volume of mortgages purchased by the respective GSE in 1994—$1.29 billion annually for Fannie Mae and $988 million annually for Freddie Mac. The Department is proposing to increase the housing goal levels as follows: The proposed level of the Low- and Moderate-Income Housing Goal is 48 percent for calendar year 2000 and 50 percent in calendar years 2001–2003; the proposed level of the Geographically Targeted Goal is 29 percent for calendar year 2000 and 31 percent in calendar years 2001–2003; and the proposed level of the Special Affordable Housing Goal is 18 percent in calendar year 2000 and 20 percent in calendar years 2001–2003. In addition, HUD is proposing to increase the special affordable multifamily subgoal to 0.9 percent of the dollar volume of total 1998 mortgage purchases in calendar year 2000 and to 1.0 percent in calendar years 2001–2003.

Further discussion of the statutory factors HUD is required to consider in setting the housing goals, and the rationale for HUD's establishment of these goals, are provided throughout the remainder of this preamble and in the Appendices to the Proposed Rule. In particular, because of the importance of the GSEs' ability to lead the industry in making mortgage credit available for targeted populations and areas, HUD is seeking comment on the following: Are the proposed housing goals appropriate given the statutory factors HUD must consider in setting the goals, and in light of the market estimates of the GSEs' shares of the affordable housing market? (See Section E.7, ''Closing the Gap Between the GSEs and The Market.'').

B. Background

1. *Fannie Mae and Freddie Mac.* The GSEs engage in two principal businesses: investing in residential mortgages and guaranteeing securities backed by residential mortgages. Fannie Mae and Freddie Mac are Government Sponsored Enterprises, chartered by Congress in order to: (1) Provide stability in the secondary market for residential mortgages; (2) respond appropriately to the private capital market; (3) provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low-and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and (4) promote access to mortgage credit throughout the nation (including central cities, rural areas, and other underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.[2]

Fannie Mae and Freddie Mac receive significant explicit benefits through their status as GSEs that are not enjoyed by any other shareholder-owned corporations in the mortgage market. These benefits include: (1) Conditional access to a $2.25 billion line of credit from the U.S. Treasury;[3] (2) exemption from the securities registration requirements of the Securities and Exchange Commission and the States;[4] and (3) exemption from all State and local taxes except property taxes.[5]

Additionally, although the securities the GSEs guarantee and the debt instruments they issue are not backed by the full faith and credit of the United States, and nothing in this proposed rule should be construed otherwise, the GSEs' securities trade at yields only a few basis points over those of U.S. Treasury securities and at yields lower than those received for securities issued by potentially higher-capitalized, fully private, but otherwise comparable firms. The market prices for GSE debt and mortgage-backed securities, and the fact that the market does not require that those securities be rated by a national rating agency, suggest that investors perceive that the government implicitly backs the GSEs' debt and securities. This perception evidently arises from the GSEs' relationship to the Federal

[2] See sec. 301 of the Federal National Mortgage Association Charter Act (Fannie Mae Charter Act) (12 U.S.C. 1716); sec. 301(b) of the Federal Home Loan Mortgage Corporation Act (Freddie Mac Act) (12 U.S.C. 1451 note).

[3] Secs. 306(c)(2) of the Freddie Mac Act and 304(c) of the Fannie Mae Charter Act.

[4] Secs. 306(g) of the Freddie Mac Act and 304(d) of the Fannie Mae Charter Act.

[5] Secs. 303(e) of the Freddie Mac Act and 309(c)(2) of the Fannie Mae Charter Act.

Government, including their public purposes, their Congressional charters, their potential direct access to U.S. Department of Treasury funds, and the statutory exemptions of their debt and mortgage-backed securities (MBS) from otherwise mandatory security laws. Consequently, each GSE's cost of doing business is significantly less than that of other firms in the mortgage market. According to the U.S. Department of Treasury, the benefits of federal sponsorship are worth almost $6 billion annually to Fannie Mae and Freddie Mac. Of this amount, reduced operating costs (*i.e.,* exemption from SEC filing fees and from state and local income taxes) represent approximately $500 million annually. These estimates are broadly consistent with the magnitudes estimated by the Congressional Budget Office and General Accounting Office. Fannie Mae and Freddie Mac appear to pass through part of these benefits to consumers through reduced mortgage costs and retain part for their own stockholders.[6]

2. Regulation of the GSEs—FHEFSSA. In 1968, Congress assigned HUD general regulatory authority over Fannie Mae[7] and in 1989, Congress granted the Department essentially identical regulatory authority over Freddie Mac.[8] Under the 1968 and 1989 legislation, HUD was authorized to require that a portion of Fannie Mae's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families. Accordingly, the Department established two housing goals—a goal for low-and moderate-income housing and a goal for housing located in central cities—by regulation, for Fannie Mae in 1978.[9] Each goal was established at the level of 30 percent of mortgage purchases. Similar housing goals for Freddie Mac were proposed by the Department in 1991 but were not finalized before October 1992, when Congress revised the Department's GSE regulatory authorities including requirements for new housing goals.

In 1992, Congress enacted the Federal Housing Enterprises Financial Safety and Soundness Act (FHEFSSA),[10] which revamped the statutory requirements and regulatory structure of the GSEs by separating the Government's financial regulation of the GSEs from its mission regulation. FHEFSSA created a new Office of Federal Housing Enterprise Oversight (OFHEO), within HUD, which was assigned new, independent, regulatory powers to ensure the GSEs' financial safety and soundness.[11] At the same time, FHEFSSA affirmed the Secretary of Housing and Urban Development's responsibility for mission regulation and provided that, except for the specific authority of the Director of OFHEO relating to the safety and soundness of the GSEs, the Secretary retains general regulatory power over the GSEs.[12] FHEFSSA also detailed and expanded the Department's specific powers and authorities, including the power to establish, monitor, and enforce housing goals for the GSEs' purchases of mortgages that finance housing for low- and moderate-income families, housing located in central cities, rural areas, and other underserved areas, and special affordable housing, affordable to very low-income families and low-income families in low-income areas.[13]

FHEFSSA also required that the Department prohibit the GSEs from discriminating in their mortgage purchases and charged the Department with several fair lending authorities including the power to take remedial action against lenders found to have engaged in discriminatory lending practices and to periodically review and comment on the GSEs' underwriting and appraisal guidelines to ensure that such guidelines are consistent with the Fair Housing Act and the fair housing requirements in FHEFSSA.[14]

FHEFSSA affirmed and detailed HUD's authority to review and approve new programs of the GSEs[15] and to require reports from the GSEs[16] including periodic data and information submissions.[17] FHEFSSA also required that the Department establish a public use data base and implement requirements for the protection of proprietary information provided by the GSEs.[18] FHEFSSA also contained detailed procedural requirements for the exercise of HUD's regulatory authorities.[19]

FHEFSSA provided that performance under its income based housing goals—the low- and moderate-income and special affordable housing goals—would be counted based on the actual income of owners and renters. The earlier housing goal regulations governing Fannie Mae had counted performance under the then existing low- and moderate-income housing goal based on house prices and rent levels.[20] The previous central cities goal counted Fannie Mae's mortgage purchases in areas designated by the Office of Management and Budget (OMB) as central cities. Following a two year transition, FHEFSSA expanded the central cities goal to include rural and other underserved areas (see discussion below). Under FHEFSSA, the Department is required to establish each of the goals after consideration of certain prescribed factors relevant to the particular goal.[21]

3. *Transition Period.* For a transition period of calendar years 1993 and 1994, FHEFSSA established statutory targets for purchases by Fannie Mae and Freddie Mac of mortgages on housing for low- and moderate-income families and housing located in OMB-defined central cities; and mortgages on special affordable housing.[22] FHEFSSA's targets for (a) low- and moderate-income mortgage purchases; and (b) central cities mortgage purchases were each established at the pre-FHEFSSA goal level of at least 30 percent of the units financed by each GSEs' total mortgage purchases for those years.[23] FHEFSSA's targets for the Special Affordable Housing Goal for the transition years,[24] unlike the other targets, were set at no less than a minimum amount of mortgage purchases measured in dollars financed, rather than the percentage of units, with the Fannie Mae goal greater than the Freddie Mac goal. For the transition period, FHEFSSA also set subgoals under the Special Affordable

[6] U.S. Department of Treasury, *Government Sponsorship of the Federal National Mortage Association and the Federal Home Loan Mortgage Corporation*(1996), page 3.

[7] Section 802(ee) of the Housing and Urban Development Act of 1968 (Pub. L. 90–448, approved August 1, 1968; 82 Stat. 476, 541).

[8] See sec. 731 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73, approved August 9, 1989), which amended the Freddie Mac Act.

[9] See 24 CFR 81.16(d) and 81.17 (1992 codification).

[10] Pub. L. 102–550; approved Oct. 28, 1992.

[11] Sec. 1311 of FHEFSSA; see also sec. 1313 of FHEFSSA. FHEFSSA charged OFHEO with designing and administering a stress test for capital adequacy and risk-based capital standards to ensure the financial safety and soundness of the GSEs. The proposed rule containing the risk-based capital requirements was published by OFHEO in the **Federal Register** (Vol. 64, No. 70) on April 13, 1999. Hereafter, unless otherwise specified, all section citations are citations to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

[12] Sec. 1321.

[13] See generally secs. 1331–34.

[14] Sec. 1325(1)–(6).

[15] Sec. 1322.

[16] Sec 1327.

[17] See secs. 1381(o)–(p), 1382(r)–(s).

[18] Secs. 1323, 1326.

[19] Secs. 1322, 1336, and 1341–49.

[20] 24 CFR 81.2(1)(3) (1992 codification). Under the previous regulations, ''housing for low- and moderate-income families'' included ''any single family dwelling * * * purchased at a price not in excess of 2.5 times the median family income * * * for the Standard Metropolitan Statistical Area.''

[21] Secs. 1332(b), 1333(a)(2), 1334(b).

[22] Secs. 1332(d), 1333(d), and 1334(d).

[23] Secs. 1332(d)(1) and 1334(d)(1).

[24] Sec. 1333(d)(1) and (2).

Housing Goal for purchases of single family and multifamily mortgages.

FHEFSSA required HUD to establish interim goals for the transition period to improve the GSEs' performances relative to the statutory targets for low- and moderate-income and central cities mortgage purchases so that the GSEs would meet the targets by the end of the transition period.[25] Following the transition, the Department would establish the goals under the statutory factors and FHEFSSA required the Department to establish a broader underserved areas goal inclusive of rural and other underserved areas as well as central cities to be defined by HUD.

On October 13, 1993, HUD published notices in the **Federal Register** establishing the interim goals and subgoals for the GSEs' mortgage purchases, and requirements for implementing those goals.[26] For Fannie Mae, HUD set the interim goal for housing for low- and moderate-income families at 30 percent of the units financed by mortgage purchases for 1993 and 1994;[27] for housing located in central cities at 28 percent for 1993 and 30 percent for 1994;[28] and for special affordable housing at $16.4 billion over the 1993–94 transition period.[29] For Freddie Mac, HUD set the interim goal for housing for low- and moderate-income families at 28 percent of the units financed by mortgage purchases for 1993 and 30 percent for 1994;[30] the interim goal for housing located in central cities at 26 percent for 1993 and 30 percent for 1994;[31] and for special affordable housing at $11.9 billion over the 1993–94 transition period.[32] On November 30, 1994,[33] HUD extended the 1994 goals for both GSEs through 1995 while the Department completed its development of post transition goals.

Both GSEs surpassed their goals for low- and moderate-income housing in 1993, 1994, and 1995. Neither GSE met its central cities goal in 1993; while Fannie Mae successfully met its central cities goal for 1994 and 1995, Freddie Mac never achieved its central cities goal during the transition period from 1993 through 1995. Both GSEs exceeded their respective special affordable housing goals and their respective single family subgoals. Fannie Mae also exceeded its multifamily subgoals for the transition period. Although Freddie Mac did not achieve the multifamily subgoal during the 1993 through 1994 period, Freddie Mac's multifamily purchases increased every year during the transition period such that Freddie Mac did achieve its multifamily subgoal in 1995.

4. HUD's 1995 Rulemaking. The Department issued proposed and final rules in 1995 to establish and implement the housing goals for the years 1996 through 1999, and to implement the Department's other authorities in FHEFSSA.[34] These regulations replaced HUD's previous regulations governing Fannie Mae, and for the first time established regulations governing Freddie Mac. HUD benefited from substantial comment during the rulemaking process from the public, the GSEs, and representatives of lenders, developers, nonprofit groups, public interest organizations, other Federal agencies and academic experts. Through the 1995 rulemaking, HUD established counting requirements for the goals, revised and streamlined the special affordable housing goal, and redefined the central cities goal to target those geographic areas of central cities, rural areas, and other areas that are underserved by mortgage credit, including those areas—metropolitan and non-metropolitan—with low median incomes and/or high minority populations that typically experience the highest mortgage denial rates and the lowest mortgage origination rates. The new regulations also prohibit the GSEs from discriminating in their mortgage purchases, implement procedures by which HUD exercises its authority to review new programs of the GSEs, require reports from the GSEs, operate a public use data base on the GSEs' mortgage purchase activities while protecting confidential and proprietary information, and enforce HUD's authorities under FHEFSSA.

In setting the first, post-transitional period housing goals for the years 1996 through 1999, HUD sought to recognize the unique position the GSEs occupy in the nation's housing finance system and to ensure that, consistent with their Congressional mandates, the GSEs provide leadership in expanding housing opportunities and providing wider access to mortgage credit. In establishing each of the housing goals, HUD considered the factors presented in FHEFSSA, including national housing needs; economic, housing, and demographic conditions; the previous performance and effort of the GSEs in achieving the specific goal; the size of the primary mortgage market for that goal; the ability of the GSEs to lead the industry; and the need to maintain the sound financial condition of the GSEs.[35] HUD established the goals under the factors, based on its estimates of the market share at that time, at levels that were reasonable and appropriate, reflecting a margin to compensate for the cyclical nature of mortgage markets and the unpredictability of other economic indicators, and allowing the GSEs flexibility in choosing how to achieve the goals.[36] Recognizing the GSEs' and others concerns about need for predictability in order to manage their business operations, HUD established the levels of the goals for a four-year period. The rule provides that the housing goals for 1999 may continue beyond 1999 if the Department does not change the goals, and explained that HUD, under FHEFSSA may change the level of the goals for the years 2000 and beyond based upon HUD's experience and in accordance with HUD's statutory authority and responsibility.

In the 1995 rulemaking, HUD established the annual goals for each GSE's purchases of mortgages on housing for low-and moderate-income families as follows: for 1996, at 40 percent of the total number of dwelling units financed by each GSE's mortgage purchases; and for each of the years 1997 through 1999, at 42 percent of the total number of dwelling units financed by each GSE's mortgage purchases.[37] HUD established the following annual goals for purchases of mortgages on housing located in central cities, rural areas, and other underserved areas: 21 percent of the total number of dwelling units financed by each GSE's mortgage purchases for 1996; and 24 percent of the total number of dwelling units financed by each GSE's mortgage purchases for each of the years 1997

[25] Secs. 1332(d)(2)(A) and 1334(d)(2)(A).

[26] 58 FR 53048, 53072.

[27] 58 FR 53049.

[28] *Id.*

[29] HUD arrived at this amount of $16.4 billion by doubling Fannie Mae's good faith estimate of its mortgage purchases that would have qualified for the Special Affordable Housing Goal in 1992 (*i.e.,* $5.85 billion in single family mortgage purchases and $1.34 billion in multifamily mortgage purchases), and adding the $2 billion increment specified in section 1333(d)(1) of FHEFSSA. See 58 FR 53049.

[30] 58 FR 53072.

[31] *Id.* at 53073.

[32] HUD arrived at this amount of $11.9 billion by doubling Freddie Mac's good faith estimate of its mortgage purchases that would have qualified for the Special Affordable Housing Goal in 1992 (*i.e.,* $5.19 billion in single family mortgage purchases and $0.02 billion in multifamily mortgage purchases), and adding the $1.5 billion increment specified in section 1333(d)(2) of FHEFSSA. See 58 FR 53073.

[33] 59 FR 61504.

[34] HUD issued the proposed rule on February 16, 1995 (60 FR 9154) and the final rule on December 1, 1995 (60 FR 61846).

[35] Sec. 1332.

[36] 60 FR 61851.

[37] 24 CFR 81.12.

through 1999.[38] HUD established the annual goals for purchases of mortgages on special affordable housing as follows: for 1996, at 12 percent of the total number of dwelling units financed by each GSE's mortgage purchases; and for each of the years 1997 through 1999, at 14 percent of the total number of dwelling units financed by each GSE's mortgage purchases. The Special Affordable Housing Goal includes a subgoal for mortgage purchases financing dwelling units in multifamily housing set at 0.8 percent of the dollar volume of mortgages purchased by the respective GSE in 1994 [39]—$1.29 billion annually for Fannie Mae and $988 million annually for Freddie Mac. As described in more detail below, through 1998, the GSEs have met and in some cases exceeded the housing goals that HUD set for the 1996 to 1999 period.

C. Secretary's Approach to Regulating the Enterprises

As explained previously, the GSEs are Congressionally-chartered entities that enjoy substantial public benefits. Through these public benefits and successful corporate management strategies, the GSEs have continued to grow and to earn substantial profits for their shareholders.

In return for the public benefits they receive, Congress has mandated in the GSEs' Charter Acts that the GSEs carry out public purposes not required of other private sector entities in the housing finance industry. The GSEs' Charter Acts require them to continually assist in the efficient functioning of the secondary market for residential mortgages, including mortgages for low- and moderate-income families that may involve a reasonable economic return that is less than the economic return on other mortgages, and to promote access to mortgage credit throughout the nation, including central cities, rural areas, and other underserved areas. These requirements create an obligation for the GSEs to work to ensure that everyone throughout the country has a reasonable opportunity to enjoy access to the mortgage financing benefits resulting from the activities of these Federally-sponsored entities.

The GSEs have achieved an important part of their mission: providing stability and liquidity to large segments of the housing finance markets. As a result of the GSEs' activities, many home buyers have benefited from lower interest rates and increased access to capital, contributing, in part, to a record national homeownership rate of 66.3 percent in 1998. While the GSEs have been successful in providing stability and liquidity to certain portions of the mortgage market, the GSEs must further utilize their entrepreneurial talents and power in the marketplace and ''lead the mortgage finance industry'' to ''ensure that citizens throughout the country enjoy access to the public benefits provided by these federally related entities.'' [40]

Despite the record national homeownership rate in 1998, lower rates have prevailed for certain minorities, especially for African-American households (45.9 percent) and Hispanics (45.7 percent). These gaps are only partly explained by differences in income, age, and other socioeconomic factors. Disparities in mortgage lending are also reflected in loan denial rates of minority groups when compared to white applicants. Denial rates for conventional (non-government-backed) home purchase mortgage loans in 1997 were 53 percent for African Americans, 52 percent for Native American applicants, 38 percent for Hispanic applicants, 26 percent for White applicants, and 13 percent for Asian applicants.[41] Despite strong economic growth, low unemployment, the lowest mortgage rates in more than 30 years, and relatively stable home prices, housing problems continue to persist for low-income families and certain minorities.

Certain segments of the population have not benefited to the same degree as have others from the advantages and efficiencies provided by Fannie Mae and Freddie Mac. The GSEs have been much less active in markets where there is a need for additional financing sources to address persistent housing needs including small multifamily rental properties, manufactured housing, single family owner-occupied rental properties, seasoned affordable housing mortgages, and older housing in need of rehabilitation.

While HUD recognizes that the GSEs have played a significant role in the mortgage finance industry by providing a secondary market and liquidity for mortgage financing for certain segments of the mortgage market, it is this recognition of their ability, along with HUD's comprehensive analyses of the size of the mortgage market and the opportunities available, America's unmet housing needs, identified credit gaps, and its consideration of all the statutory factors that causes HUD to propose increased goals so that as the GSEs grow their businesses they will address new markets and persistent housing finance needs.

D. Statutory Considerations in Setting the Level of the Housing Goals

In establishing the housing goals, FHEFSSA requires the Department to consider six factors—national housing needs; economic, housing and demographic conditions; performance and effort of the GSEs toward achieving the goal in previous years; size of the conventional mortgage market serving the targeted population or areas, relative to the size of the overall conventional mortgage market; ability of the GSEs to lead the industry in making mortgage credit available for the targeted population or areas; and the need to maintain the sound financial condition of the GSEs. These factors are discussed in more detail in the following sections of this preamble and in the Appendices to this proposed rule. A summary of HUD's findings relative to each factor follows:

1. National Housing Needs. Analysis and research by HUD and others in the housing industry indicate that there are, and will continue to be in the foreseeable future, substantial housing needs among lower-income and minority families. Data from the 1990 Census and the American Housing Surveys demonstrate that there are substantial unmet housing needs among lower-income families. Many households are burdened by high homeownership costs or rent payments and will likely continue to face serious housing problems, given the dim prospects for earnings growth in entry-level occupations. According to HUD's ''Worst Case Housing Needs'' report, 21 percent of owner households faced a moderate or severe cost burden in 1995. Affordability problems were even more common among renters, with 40 percent paying more than 30 percent of their income for rent in 1995.[42]

Despite the growth during the 1990s in affordable housing lending, disparities in the mortgage market remain, with certain minorities, particularly African-American and Hispanic families, lagging the overall market in rate of homeownership. In addition, there is evidence that the aging stocks of single family rental properties and small multifamily properties with 5–50 units, which play a key role in lower-income housing, have been affected by difficulties in obtaining credit. The ability of the

[38] 24 CFR 81.13.

[39] 24 CFR 81.14.

[40] S. Rep. No. 282, 102d Cong., 2d Sess. 34 (1992).

[41] FFIEC Press Release, August 6, 1998

[42] Rental Housing Assistance—The Crisis Continues: The 1997 Report to Congress on Worst Case Housing Needs, Department of Housing and Urban Development, Office of Policy Development and Research, (April 1998).

nation to maintain the quality and availability of the existing affordable housing stock and to stabilize neighborhoods depends on an adequate supply of affordable credit to rehabilitate and repair older units.

a. *Single Family Mortgage Market.* Many younger, minority, and lower-income families did not become homeowners during the 1980s due to the slow growth of earnings, high real interest rates, and continued house price increases. Over the past six years, economic expansion, accompanied by low interest rates and increased outreach on the part of the mortgage industry, has improved affordability conditions for lower-income families. Between 1994 and 1998, record numbers of lower-income and minority families purchased homes. First time homeowners have become a major driving force in the home purchase market over the past five years. Thus, the 1990s have seen the development of a strong affordable lending market. However, despite the growth of lending to minorities, disparities in the mortgage market remain. For example, African-American applicants are still twice as likely to be denied a loan as white applicants, even after controlling for income.

b. *Multifamily Mortgage Market.* Since the early 1990s, the multifamily mortgage market has become more closely integrated with global capital markets, although not to the same degree as the single family mortgage market. Loans on multifamily properties are still viewed as riskier by some than mortgages on single family properties. Property values, vacancy rates, and market rents in multifamily properties appear to be highly correlated with local job market conditions, creating greater sensitivity of loan performance to economic conditions than may be experienced for single family mortgages.

Recent volatility in the market for Commercial Mortgage Backed Securities (CMBS), an important source of financing for multifamily properties, underlines the need for an ongoing GSE presence in the multifamily secondary market. The potential for an increased GSE presence is enhanced by the fact that an increasing proportion of multifamily mortgages are now originated in accordance with secondary market standards.

The GSEs can play a role in promoting liquidity for multifamily mortgages and increasing the availability of long-term, fixed rate financing for these properties. Increased GSE presence would provide greater liquidity to lenders, *i.e.,* a viable ''exit strategy,'' that in turn would serve to increase their lending. It appears that financing of small multifamily rental properties with 5–50 units, where a substantial portion of the nation's affordable housing stock is concentrated, have been adversely affected by excessive borrowing costs. Multifamily properties with significant rehabilitation needs also appear to have experienced difficulty gaining access to mortgage financing. Moreover, the flow of capital into multifamily housing for seniors has been historically characterized by a great deal of volatility.

2. Economic, Housing, and Demographic Conditions. Studies indicate that changing population demographics will result in a need for the mortgage market to meet nontraditional credit needs and to respond to diverse housing preferences. The U.S. population is expected to grow by an average of 2.4 million per year over the next 20 years, resulting in 1.1 to 1.2 million new households per year. In particular, the continued influx of immigrants will increase the demand for rental housing while those who immigrated during the 1980s will be in the market to purchase owner-occupied housing. The aging of the baby-boom generation and the entry of the smaller baby-bust generation into prime home buying age is expected, however, to have a dampening effect on housing demand. Non-traditional households have, and will, become more important, as overall household formation rates slow down. With later marriages, divorce, and non-traditional living arrangements, the fastest growing household groups have been single-parent and single-person households. With continued house price appreciation and favorable mortgage terms, ''trade-up buyers'' will also increase their role in the housing market. There will also be increased credit needs from new and expanding market sectors, such as manufactured housing and housing for senior citizens. These demographic trends will lead to greater diversity in the homebuying market, which, in turn, will require greater adaptation by the primary and secondary mortgage markets.

As a result of the above demographic forces, housing starts are expected to average 1.5 million units between 1999 and 2003, essentially the same as in 1996–98.[43] Refinancing of existing mortgages, which accounted for 50 percent of originations in 1998, has continued to play a major role in 1999, but is expected to return to more normal levels during 2000. Thus, the mortgage market remained strong with over one trillion dollars in expected originations in 1999, and a somewhat lower number of originations are expected in 2000.

3. Performance and Effort of the GSEs Toward Achieving the Goal in Previous Years. Both Fannie Mae and Freddie Mac have improved their affordable housing loan performance over the past five years. However, the GSEs' mortgage purchases continue to lag the overall market in providing financing for affordable housing to underserved borrowers and their neighborhoods, indicating that there is more that the GSEs can do to improve their performance. In addition, a large percentage of the lower-income loans purchased by the GSEs have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the needs of those lower-income families which have little cash for making large down payments but can fully meet their monthly obligations. The discussion of the performance and effort of the GSEs toward achieving the housing goals in previous years is specific to each of the three housing goals. This topic is discussed further in Section II., B., ''Subpart B—Housing Goals'' below and in the Appendices to this proposed rule.

4. Size of the Conventional Mortgage Market Serving the Targeted Population or Areas, Relative to the Size of the Overall Conventional Mortgage Market. The Department's analyses indicate that the size of the conventional conforming market relative to each housing goal is greater than earlier estimates based mainly on HMDA data for 1992 through 1994 used in establishing the 1995–1999 housing goals. Due to inherent uncertainty about future market conditions, HUD has developed a plausible range under each goal, rather than a point estimate, for the current market. The discussion of the size of the conventional mortgage market serving targeted populations or areas relative to the size of the overall conventional mortgage market is specific to each of the three housing goals. The Department's estimate of the size of the conventional mortgage market is discussed further below in Section I, ''Setting the Level of the Housing Goals,'' Section II., B., ''Subpart B—Housing Goals'' and in the Appendices to this proposed rule.

5. Ability of the GSEs to Lead the Industry in Making Mortgage Credit Available for the Targeted Population or Areas. Research concludes that the GSEs have generally not been leading the market, but have lagged behind the primary market in financing housing for

[43] Standard & Poor's DRI Review of the U.S. Economy. (September 1999), p. 53–55.

lower-income families and their communities. However, the GSEs' state-of-the-art technology, staff resources, share of the total conventional conforming market, and their financial strength suggest that the GSEs have the ability to lead the industry in making mortgage credit available for lower-income families and underserved neighborhoods.

The legislative history of FHEFSSA indicates Congress's strong concern that the GSEs need to do more to benefit low- and moderate-income families and the residents of underserved areas that lack access to credit.[44] The Senate Report on FHEFSSA emphasized that the GSEs should ''lead the mortgage finance industry in making mortgage credit available for low- and moderate-income families.'' [45] FHEFSSA, therefore, specifically required that HUD consider the ability of the GSEs to lead the industry in establishing the level of the housing goals. FHEFSSA also clarified the GSEs' responsibility to complement the requirements of the Community Reinvestment Act [46] and fair lending laws [47] in order to expand access to capital to those historically underserved by the housing finance market.

During the 1995 rulemaking, HUD received comments regarding what it means for the GSEs to ''lead the industry.'' The GSEs themselves and others pointed out that the GSEs are often ''leaders'' through their introduction of innovative products, technology, and processes. For example, both GSEs have introduced technological advances through their development of automated underwriting systems. Fannie Mae has also developed state-of-the-art mapping software for use by lenders, nonprofit organizations, and State and local governments to help implement community lending programs. In addition, Fannie Mae has established partnership offices in more than 30 cities, allowing it to reach out to local lenders and affordable housing groups regarding Fannie Mae's programs. While Freddie Mac has not established partnership offices, it has established alliances at the national and local level to expand affordable housing opportunities. Nonetheless, while the GSEs are ''leaders'' in these areas, leadership also involves increasing the availability of financing for homeownership and affordable rental housing. Thus, the GSEs' obligation to ''lead the industry'' also entails leadership in facilitating access to affordable credit in the primary market for borrowers at different income levels and housing needs, as well as for underserved urban and rural areas.

While the GSEs cannot be expected to solve all of the nation's housing problems, the efforts of Fannie Mae and Freddie Mac have not matched the opportunities that are available in the primary mortgage market. Although the GSEs were directed by Congress to ''lead the mortgage finance industry in making mortgage credit available for low- and moderate-income families,'' depository institutions have been more successful than the GSEs in providing affordable loans to lower income borrowers and in historically underserved neighborhoods.

For example, very low-income borrowers accounted for 9.9 percent of Freddie Mac's purchases of home loans in 1998, 11.4 percent of Fannie Mae's purchases, 15.2 percent of home loans originated and retained by depository institutions, and 13.3 percent of home purchase mortgages originated in the overall conventional conforming market. Similarly, mortgage purchases on properties located in underserved areas accounted for 20.0 percent and 23.5 percent of Freddie Mac's and Fannie Mae's purchases of home loans, respectively, 26.1 percent of home purchase mortgages originated and retained by depository institutions and 24.6 percent of home purchase mortgages originated in the overall conventional conforming market. Since 1992, Fannie Mae has improved its affordable lending performance and has made progress toward closing the gap between its performance and that of the overall mortgage market. Freddie Mac has shown less improvement and, as a result, has not made as much progress in closing the gap between its performance and that of the overall market for home loans.

The GSEs have been much less active in providing financing for the multifamily rental housing market. In 1997, Fannie Mae's multifamily purchases amounted to $6.9 billion and Freddie Mac's, $2.7 billion, for total multifamily purchases of $9.6 billion. The GSEs' purchases have accounted for approximately 22 percent of the multifamily dwelling units that were financed in 1997. By way of comparison, HUD estimates that 4.9 million units were financed by mortgages on single family owner-occupied properties in 1997, and the GSEs have financed 2.4 million, or 49 percent of these units. Thus, the GSEs' presence in the multifamily mortgage market was less than one-half of their presence in the market for mortgages on single family owner-occupied properties.

In addition, the GSEs continue to lag the overall conforming, conventional market in providing affordable home purchase loans to underserved neighborhoods. During 1998, mortgages financing housing in underserved census tracts (as defined by HUD) [48] accounted for 20.0 percent of Freddie Mac's single family mortgage purchases, compared with 22.9 percent of Fannie Mae's single family mortgage purchases, 26.1 percent of mortgage loans originated and held in portfolio by depository institutions, and 24.6 percent of the overall conforming conventional mortgage market. Fannie Mae has improved its performance in underserved areas to almost reach market levels. However, Freddie Mac has made much less progress through 1998 in serving families living in underserved neighborhoods.

Additionally, a large percentage of the lower-income loans purchased by both GSEs have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the needs of lower-income families, who find it difficult to raise enough cash for a large down payment. Also, while single family rental properties are an important source of low- and moderate-income rental housing, they represent only a small portion of the GSEs' business.

The Appendices to this proposed rule provide more information on HUD's analysis of the extent to which the GSEs have not led the mortgage industry in funding loans to underserved borrowers and neighborhoods. From this analysis of the GSEs' performance in comparison with the primary mortgage market and with other participants in the mortgage markets, it is clear that the GSEs need to improve their performance relative to the primary market of conforming conventional mortgage lending. The need for improvements in the GSEs' performance is especially apparent with respect to the single family and multifamily rental markets.

6. Need to Maintain the Sound Financial Condition of the GSEs. Based on HUD's economic analysis and discussions with the Office of Federal Housing Enterprise Oversight, HUD concludes that the proposed level of the goals will not adversely affect the sound financial condition of the GSEs.

E. Setting the Level of the Housing Goals

There are several reasons the Department, having considered all the

[44] See, e.g., S. Rep. at 34.

[45] S. Rep. at 34.

[46] 12 U.S.C. 2901 *et seq.*

[47] See section 1335(3)(B).

[48] 24 CFR 81.2(b).

statutory factors, is proposing increases in the housing goals.

1. *Market Needs and Opportunities.* First, the GSEs appear to have substantial room for growth in serving the affordable housing mortgage market. For example, the Department calculated that the two GSEs' mortgage purchases accounted for 39 percent of the total conventional mortgage market during 1997 (as measured by the total number of units financed by the GSEs). In contrast, GSE purchases comprised only 30 percent of the low- and moderate-income mortgage market in 1997, 33 percent of the underserved areas market, and, a still smaller, 24 percent of the special affordable market.

The GSEs' role in the mortgage market varies somewhat from year to year in response to changes in interest rates, mortgage product types, and a variety of other factors. But underlying market trends show a clear and significant increase in the GSEs' role. Specifically, OFHEO estimates that the share (in dollars) of single-family mortgages outstanding accounted for by mortgage-backed securities issued by the GSEs and by mortgages held in the GSEs' portfolios has risen from 31 percent in 1990 to 37 percent in 1992, 40 percent in 1994, 43 percent in 1996, and 45 percent in 1998. In absolute terms, the GSEs' presence has grown even more sharply, as the total volume of single-family mortgage debt outstanding has increased rapidly over this period.

The GSEs have indicated that they expect their role in the mortgage market to continue to increase in the future, as they develop new products, refine existing products, and enter markets where they have not played a major role in the past. The Department's goals for the GSEs also anticipate that their involvement in the mortgage market will continue to increase.

The Department estimates that 7.4 million owner-occupied and rental units were financed by conventional conforming mortgages in 1997, and that the GSEs provided financing for 39 percent, or 2.9 million, of these units. However, the GSEs' mortgage market presence varies significantly by property type—while they accounted for about 49 percent of the owner-occupied units financed in the primary market in that year, their role was much less in the mortgage market for mortgages on rental properties.

Specifically, HUD estimates that Fannie Mae and Freddie Mac accounted for only about 19 percent of rental units financed in 1997. And within the rental category, the GSEs have yet to play a major role in financing mortgages for single family rental properties—those with at least one rental unit and no more than four units in total.

For the types of units covered by HUD's goals, the GSEs' role is significantly less than their overall market presence of 39 percent. Specifically, HUD estimates that Fannie Mae and Freddie Mac financed 33 percent of the units that qualified for the Geographically Targeted Goal. The GSEs' role was even lower for HUD's other two goals—they financed just 31 percent of units qualifying for the Low- and Moderate-Income Housing Goal, and only 24 percent of special affordable units, for very low-income families and low-income families in low-income areas.

There are a number of relatively untapped segments of the multifamily, single-family owner, and single-family rental markets where the GSEs might play an enhanced role and thereby increase their shares of targeted loans and their performance on the housing goals. Six such areas are discussed below.

a. *Small Multifamily Properties.* One sector of the multifamily mortgage market where the GSEs could play an enhanced role involves loans on small multifamily properties—those containing 5–50 units. The GSEs typically purchase relatively few of these loans, which account for 37 percent of the stock of all multifamily units in mortgaged properties, according to the 1991 Survey of Residential Finance.

HUD estimates that the GSEs acquired loans financing only four percent of units in small multifamily properties originated during 1995 through 1997. This is substantially less than the GSEs' presence in the overall multifamily mortgage market, which the Department estimates was 22 percent in 1997.

Increased purchases of small multifamily mortgages would make a significant contribution to performance on the goals, since the percentages of these units qualifying for the income-based housing goals are high—in 1998, 94 percent of units backing both GSEs' combined multifamily mortgage purchases qualified for the Low- and Moderate-Income Housing Goal and about 55 percent of units backing Freddie Mac's multifamily mortgage purchases met the Special Affordable Housing Goal.[49]

b. *Multifamily Rehabilitation Loans.* Another multifamily market segment holding potential for expanded GSE presence involves properties with significant rehabilitation needs.

Properties that are more than 10 years old are typically classified as ''C'' or ''D'' properties, and are considered less attractive than newer properties by many lenders and investors. Fannie Mae's underwriting guidelines for negotiated transactions state that ''the Lender is required to use a more conservative underwriting approach'' for transactions involving properties 10 or more years old. Fannie Mae funding for rehabilitation projects is generally limited to $6,000 per unit. Multifamily rehabilitation loans accounted for only 0.5 percent of units backing Fannie Mae's 1998 purchases. Freddie Mac's purchases of multifamily rehabilitation loans in 1998 were 1.9 percent of its multifamily total.

c. *Single Family Rental Properties.* Studies show that single family rental properties are a major source of affordable housing for lower-income families. Yet, these properties are only a small portion of the GSEs' overall business.

HUD estimates that approximately 127,000 mortgages were originated on owner-occupied single-family rental properties in 1997. These mortgages financed a total of 286,000 units—the owner units plus an additional 159,000 rental units. Data submitted to HUD by the GSEs indicates that the GSEs combined to finance 94,000 such units, only 33 percent of the units financed in the primary market.

There is ample room for an enhanced GSE role in this ''goal-rich'' market. For the GSEs combined, 64 percent of the units in these properties qualified for the low-mod goal in 1997, 33 percent qualified for the special affordable goal, and 56 percent qualified for the underserved areas goal. Thus significant gains could be made in performance on all of their goals if Fannie Mae and Freddie Mac played a larger role in the market for mortgages on single-family 2–4 unit owner-occupied properties.

d. *Manufactured Homes.* The Manufactured Housing Institute, in its Annual Survey of Manufactured Home Financing, reported that 116 reporting institutions originated $15.6 billion in consumer loans on manufactured homes in 1998, and that, with an average loan amount of about $30,000, approximately 520,000 loans were originated.

While the GSEs have traditionally played a minimal role in financing manufactured housing, they have recently stepped up their activity. But, even with this stepped-up activity in this market, the GSEs' purchases probably accounted for less than 15 percent of total loans on manufactured

[49] Fannie Mae did not obtain some of the data necessary to qualify many of their multifamily loans for the Special Affordable Housing Goal.

homes in 1998—a figure well below their overall market presence of 39 percent.

There is ample room for an enhanced GSE role in this market, with its high concentration of goals-qualifying mortgage loans. For loans reported in 1998 in accordance with HMDA by 21 manufactured housing lenders, 76 percent qualified for the low-mod goal in 1998, 42 percent qualified for the special affordable goal, and 47 percent qualified for the underserved areas goal. Thus manufactured housing has significantly higher shares of goal-qualifying loans than all single-family owner-occupied properties, though they are not quite as ''goal-rich'' as loans on multifamily properties. In general, though, goal performance could be enhanced substantially if the GSEs were to play an increased role in the manufactured housing mortgage market.

e. *A-Minus Loans.* Industry sources estimate that subprime mortgage originations amounted to about $125 billion in 1997, and that these loans are divided evenly between the more creditworthy (''A-minus'') subprime borrowers and less creditworthy (''B,'' ''C,'' and ''D'') borrowers. Based on HMDA data for 200 subprime lenders, the Department estimates that 58 percent of the units financed by subprime loans qualified for the low-mod goal in 1997, 29 percent qualified for the special affordable goal, and 45 percent qualified for the underserved areas goal.

Freddie Mac has begun to purchase loans originated in the A-minus mortgage market, as long as the loans are processed through its Loan Prospector system. Freddie Mac has estimated that 10–30 percent of subprime borrowers would qualify for a prime conventional loan. Freddie Mac has also purchased subprime loans through structured transactions that limit Freddie Mac's risk to the ''A'' piece of a senior-subordinated transaction. Fannie Mae recently introduced a program aimed at borrowers with past credit problems that would lower the interest rates for those borrowers that were timely on their mortgage payments.

However, there is ample room for further enhancement of both GSEs' roles in the A-minus market. A larger role by the GSEs could help standardize mortgage terms in this market, which would lead to lower interest rates.

f. *Seasoned Mortgages.* Over the past five years, depository institutions (banks and thrifts) have been expanding their affordable loan programs and, as a result, have originated substantial numbers of loans to low-income and minority borrowers and their neighborhoods. Much of this outreach to underserved communities is due to the Community Reinvestment Act (CRA), which requires depository institutions to help meet the credit needs of their communities. A large number of the ''CRA-type'' loans that have recently originated remain in thrift and bank portfolios; selling these loans on the secondary market would free up capital for depositories to originate new CRA loans. Given its enormous size, the CRA market segment provides an opportunity for Fannie Mae and Freddie Mac to expand their affordable lending programs. While some of these loans, when originated, may not have met the GSE's underwriting guidelines, it appears they are beginning to be purchased by GSEs after the loans have seasoning and through various structured transactions. As explained in Appendix A, Fannie Mae is beginning to purchase these seasoned loans, which has improved its performance on the housing goals. Freddie Mac, on the other hand, has not been as active as Fannie Mae in purchasing seasoned ''CRA-type'' loans. With billions of dollars worth of CRA loans in bank portfolios, the early experience of Fannie Mae suggests that this could not only be an important strategy for reaching the housing goals but could also provide needed liquidity for a market that is serving the needs of low-income and minority homeowners.

2. *Market Share Higher Than Goal Levels.* The shares of the mortgage markets that qualify for each of the housing goals are higher than the current goals. Specifically, the current Low-and Moderate-Income Housing Goal for 1997 through 1999 is 42 percent, but the market share for low- and moderate-income mortgages is estimated at 50–55 percent. The Geographically Targeted Goal for 1997 through 1999 is 24 percent, but the estimated market share of geographically targeted mortgages is 29–32 percent. The Special Affordable Housing Goal for 1997 through 1999 is 14 percent, but the estimated special affordable market share is 23–26 percent.[50] Thus, the proposed increases in the housing goals, described below, will significantly reduce the disparities that currently exist between the housing goals and HUD's market estimates. HUD's analysis indicates that the proposed goals are reasonable and feasible under more adverse economic environments than have recently existed. Reasons for the remaining disparity between the proposed GSE housing goals and the respective shares of the overall mortgage market qualifying for each of the housing goals are discussed below in Section E.7, ''Closing The Gap Between the GSEs and The Market.''

3. *Need for Increased Affordable Single Family Mortgage Purchases.* Higher housing goals are needed to assure that both Fannie Mae and Freddie Mac increase their purchases of single family mortgages for lower-income families. The GSEs lag behind depository institutions and other lenders in the conventional conforming market in providing mortgage funds for these underserved families and their neighborhoods. Numerous studies have concluded that Fannie Mae and, especially, Freddie Mac have room to increase their purchases of affordable loans originated by primary lenders. The single family affordable market, which had only begun to grow when HUD set housing goals in 1995, has now established itself with six straight years (1993–1998) of solid performance. Current economic forecasts suggest that the strong housing affordability of the past several years will be maintained in the post-1999 period, leading to additional opportunities for the GSEs to support mortgage lending benefiting families targeted by the housing goals. But, as explained in Appendix D, HUD's housing market estimates allow for more adverse economic conditions than have existed recently.

4. *Market Disparities.* Despite the recent growth in affordable lending, there are many groups who continue to face problems obtaining mortgage credit and who would benefit from a more active and targeted secondary market. Homeownership rates for lower-income families, certain minorities, and central city residents are substantially below those of other families, and the disparities cannot simply be attributed to differences in income. Immigrants represent a ready supply of potential first-time home buyers and will need access to mortgage credit. Special needs in the market, such as rehabilitation of older 2–4 unit properties, could be helped by new mortgage products and more flexibility in underwriting and appraisal guidelines. The GSEs, along with primary lenders and private mortgage insurers, have been making efforts to reach out to these underserved portions of the markets. However, more needs to be done, and the proposed increases in the housing goals are

[50] The low-and moderate-income market share is the estimated proportion of newly mortgaged units in the market serving low-and moderate-income families. The two other shares are similarly defined. HUD's range of estimates (such as 50–55 percent) reflects uncertainty about future market conditions.

intended to encourage additional efforts by Fannie Mae and Freddie Mac.

5. *Impact of Multifamily Mortgage Purchases.* When the 1996–99 goals were established in December 1995, Freddie Mac had only recently reentered the multifamily mortgage market, after an absence in the early 1990s. Freddie Mac has made progress in rebuilding its multifamily mortgage purchase program, with its purchases of these loans rising from $191 million in 1993 to $6.6 billion in 1998. Freddie Mac's limited role in the multifamily market was a significant constraint when HUD set the level of the housing goals for 1996 through 1999. While Freddie Mac has made progress by establishing a solid foundation of multifamily mortgage purchases, they still lag the market in this area. Accordingly, the Department is proposing to provide Freddie Mac with a temporary adjustment factor for purchases of mortgages in multifamily properties with more than 50 units, as discussed in more detail, below.

6. *Financial Capacity to Support Affordable Housing Lending.* A wide variety of quantitative and qualitative indicators demonstrate that the GSEs' have ample, indeed robust, financial strength to improve their affordable lending performance. For example, the combined net income of the GSEs has risen steadily over the last decade, from $677 million in 1987 to $5.1 billion in 1998, an average annual growth rate of 20 percent per year. This financial strength provides the GSEs with the resources to lead the industry in making mortgage financing available for families and neighborhoods targeted by the housing goals.

7. *Closing the Gap Between the GSEs and the Market.* This section discusses the relationship between the housing goals, HUD's market estimates, and key segments of the affordable market in which the GSEs have had only a weak presence. To lay the groundwork for this discussion, the following table summarizes the Department's findings regarding market estimates and GSE performance as well as the levels of the housing goals during 1997–1999 and the goals proposed here:

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Percentage of Eligible Units Financed:

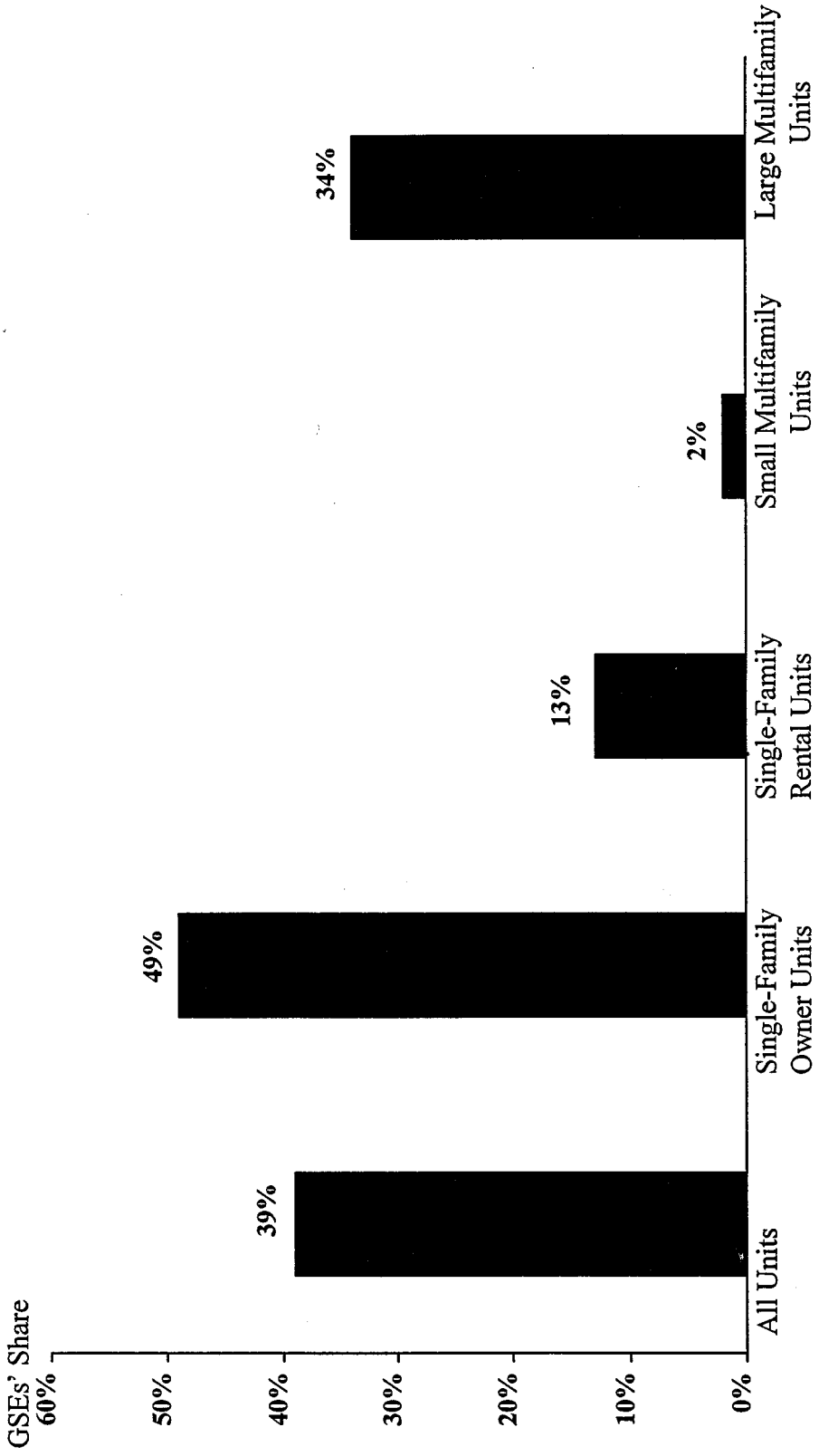
	1997-1999 Requirement	2001-2003 Proposed Requirements[1]	GSEs' Average Performance 1996-1998 (Fannie Mae/ Freddie Mac)	HUD's Estimated 1995-1997 Market Average[2]	HUD's Projected Market Estimate
Low-and Moderate Income Goal	42%	50%	45.1% 42.2%	57.3%	50-55%
Geographically Targeted Goal	24%	31%	28.0% 25.8%	33.1%	29-32%
Special Affordable Housing Goal	14%	20%	15.6% 15.0%	28.6%	23-26%

[1] Proposed year 2000 transition goals are 48 percent, 29 percent, and 18 percent, respectively.

[2] Appendix D explains the specific reasons the 1995-97 market estimates for the low-mod and special affordable goals are higher than the upper end of HUD's market projections for the years 2000-2003. Based on average 1993-98 experience, HUD's projection model assumes that refinance borrowers have higher incomes that home purchase borrowers; however, during the 1995-97 period, refinance borrowers had lower incomes. The 1995-97 period also exhibited a slightly higher percentage of rental units financed than assumed in HUD's projection model. See Appendix D for other reasons the 1995-97 market estimates are higher than those projected for the years 2000-2003.

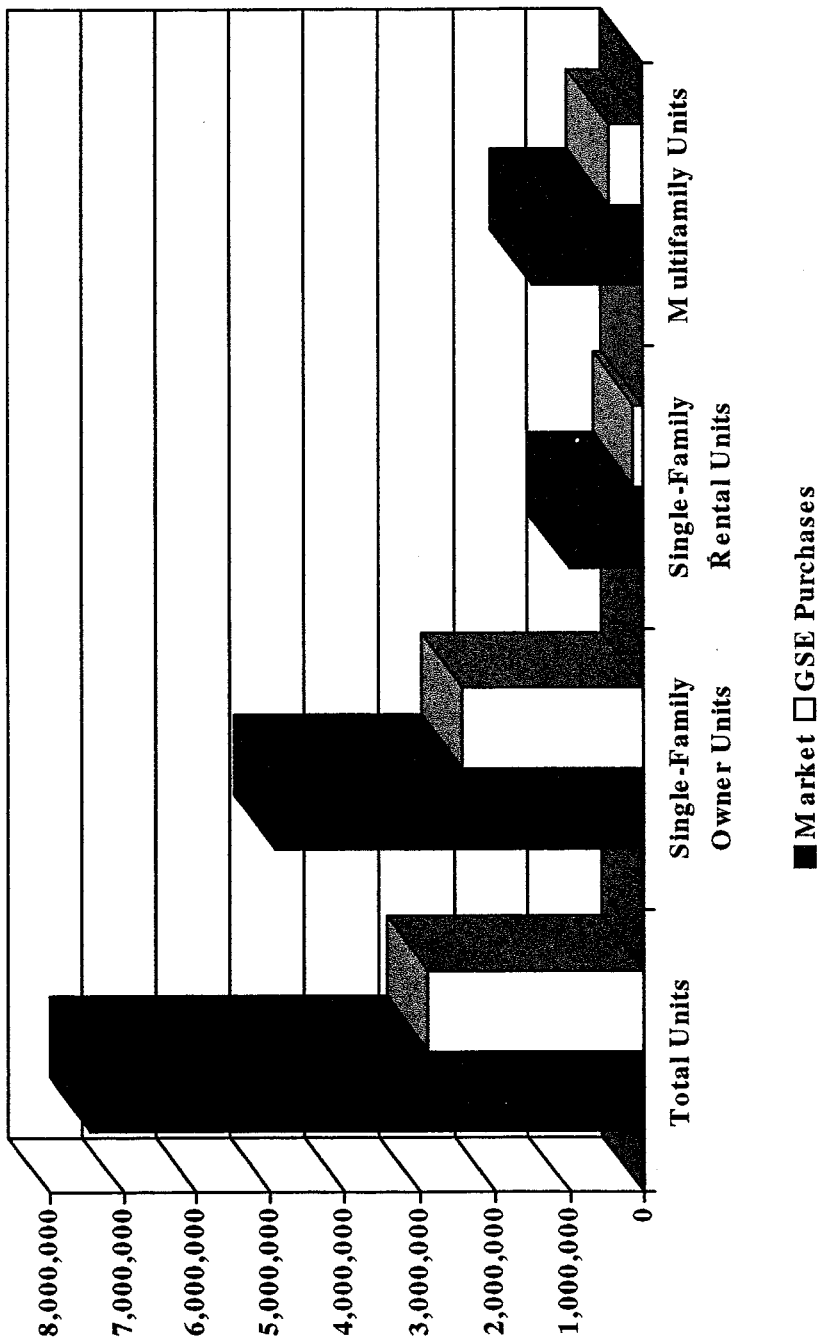
It is evident from this table that the proposed Low- and Moderate-Income and Special Affordable Housing Goals are below HUD's projected market estimate for the years (2000–2003) covered by the proposed housing goals. One reason for this disparity involves disaggregating GSE purchases by property type, which shows that the GSEs have little presence in some important segments of the affordable housing market. For example, as shown in Figure 1, in 1997 the GSEs purchased loans representing only 13 percent of units in single-family rental properties, and only 2 percent of units in small multifamily properties mortgaged that year. (Figure 2 provides additional detail providing unit data comparing the GSEs' with the conventional conforming market). Typically, more than 90 percent of units in single-family rental and small multifamily properties qualify for the Low- and Moderate-Income Housing Goal. Thus, one reason why the GSEs' performance on the Low- and Moderate-Income Housing Goal falls short of HUD's market estimate, is that the GSEs have had only a weak and inconsistent presence in financing these important sources of affordable housing, but these market segments are important components in the market estimate.

Figure 1
GSEs' Share of the 1997 Conventional Conforming Market by Property Type



Source: See Table A7, Appendix A, and discussion of mortgages on small multifamily properties in Appendix A, Section G.

Figure 2
Units in the 1997 Conventional Conforming Mortgage Market Compared to GSE Purchases By Property Type



Source: See Table A.7, Appendix A.

The same disparities are seen in figures relating to GSE purchase shares and market shares in the relevant market segments, as utilized by HUD in preparing its market estimates for the Low- and Moderate-Income Housing Goal. In the overall conventional mortgage market, units in single-family rental properties and small multifamily properties are expected to represent approximately 19 percent of the overall mortgage market, and 31 percent of units backing mortgages qualifying for the Low- and Moderate-Income Housing Goal. Yet in 1997, units in such properties accounted for 5.5 percent of the GSEs' overall purchases, and only 10.5 percent of GSE purchases meeting the Low- and Moderate-Income Housing Goal. The continuing weakness in GSE purchases of mortgages on single-family rental and small multifamily properties is a major factor explaining the shortfall between GSE performance and that of the primary mortgage market.

For a variety of reasons, the GSEs have historically viewed the single-family rental and small multifamily market segments as more difficult for them to penetrate than the single-family owner-occupied mortgage market. In order to provide the GSEs with an incentive to enter these markets and provide the benefits of more consistent exposure to secondary markets, HUD is proposing to award ''bonus points'' for their purchases of mortgages on owner-occupied single-family rental properties and small multifamily properties in calculating credit toward the housing goals, as discussed below. The bonus points will make the Department's proposed housing goals easier for the GSEs to attain if they devote resources to affordable market segments where their past role has been limited. Further, awarding bonus points for these units would have resulted in some increases in the GSEs' performance for the three goals over the 1996–98 period. (See Subpart B, 5a.).

Because of the importance of the GSEs' ability to lead the industry in making mortgage credit available for targeted populations and areas, HUD wishes to solicit comments on the following:

Are the proposed housing goals appropriate given the statutory factors HUD must consider in setting the goals, and in light of the market estimates of the GSEs' share of the affordable housing market?

F. Principles Governing Regulation of the GSEs

In proposing these regulations, the Department was guided by and affirmed the following principles established in the 1995 rulemaking:

1. To fulfill the intent of FHEFSSA, the GSEs should lead the industry in ensuring that access to mortgage credit is made available for very low-, low- and moderate-income families and residents of underserved areas. HUD recognizes that, to lead the mortgage industry over time, the GSEs will have to stretch to reach certain goals and close the gap between the secondary mortgage market and the primary mortgage market. This approach is consistent with Congress' recognition that ''the enterprises will need to stretch their efforts to achieve'' the goals.[51]

2. The Department's role as a regulator is to set broad performance standards for the GSEs through the housing goals, but not to dictate the specific products or delivery mechanisms the GSEs will use to achieve a goal. Regulating two exceedingly large financial enterprises in a dynamic market requires that HUD provide the GSEs with sufficient latitude to use their innovative capacities to determine how best to develop products to carry out their respective missions. HUD's regulations should allow the GSEs to maintain their flexibility and their ability to respond quickly to market opportunities. At the same time, the Department must ensure that the GSEs' strategies serve all families and markets and address unmet credit needs. The addition of subgoals and/or bonus points to the regulatory structure may provide an additional means of encouraging the GSEs' affordable housing activities to address identified, persistent credit needs while leaving the specific approaches to meeting these needs to the GSEs.

3. Discrimination in lending—albeit sometimes subtle and unintentional—has denied racial and ethnic minorities the same access to credit to purchase a home that has been available to similarly situated non-minorities. The GSEs have a central role and responsibility to promote access to capital for minorities and other identified groups and to thereby exhibit the feasibility of such lending.

4. In addition to the GSEs' purchases of single family home loans, the GSEs also must continue to assist in the creation of an active secondary market for multifamily loans. Affordable rental housing is essential for those families who cannot afford to become homeowners. The GSEs must assist in making capital available to assure the continued development of rental housing.

[51] See footnote 40.

II. Discussion of Proposed Regulatory Changes

This proposed rule includes changes to definitions applicable to the housing goals, establishment of new housing goal levels, new requirements for counting mortgage purchases under the goals, discussion of possible regulatory incentives intended to spur greater GSE involvement in untapped segments of the affordable housing market, and an expansion of data available to the public on the GSEs' mortgage loan purchases. Much of the analysis referenced in this discussion is based on data through calendar year 1997. Information on the GSEs' mortgage purchases for 1998 is referenced where feasible.

Many of the proposed rule changes, included in the final rule, will involve changes in data reporting requirements. The final rule will identify the specific changes to data reporting necessary to implement any new requirements for counting mortgage purchases under the housing goals.

A. Subpart A—General

Since 1996, as a result of HUD's experience with the 1995 GSE rule, the Department has identified several definitions that require greater clarity to ensure consistent application of the housing goal requirements. Accordingly, some definitional changes are proposed for this purpose. Other definitional changes would be necessary as a result of the proposed changes to the housing goals. These types of definitional changes are discussed in the following Subpart B—Housing Goals.

1. *Definitions.* The following definitions are proposed to be added or revised in order to provide greater clarity, consistency and guidance with regard to this regulation.

a. *Metropolitan Area.* This rule proposes to revise the existing definition of ''Metropolitan Area'' to correct an ambiguity in the relevant area for defining median incomes. ''Metropolitan Area'' is defined in § 81.2 of the current regulation as a ''metropolitan statistical area (MSA), a primary metropolitan statistical area (PMSA), or a consolidated metropolitan statistical area (CMSA), designated by the Office of Management and Budget of the Executive Office of the President.'' This definition gives rise to an ambiguity in the definitions of underserved area and the denominator of the affordability ratio used to compute the Low- and Moderate-Income Housing Goal and Special Affordable Housing Goal in whether to use the median income of the CMSA or the PMSA. For example, the underserved

area definition requires that the denominator be the metropolitan area median income. Should the median income of a census tract in Washington, D.C. be compared to median income of the Washington PMSA or the Baltimore-Washington CMSA? HUD has consistently defined underserved areas, as well as denominators for the other goals, using the median incomes of the PMSA. This rule would correct this ambiguity by revising the definition of ''Metropolitan Area'' in § 81.2 to eliminate the reference to CMSAs.

b. *Median Income.* Under § 81.2 of HUD's current regulations, the definition of ''Median Income'' with respect to an area is the unadjusted median family income for the area, as most recently determined and published by the Department; ''area'' includes metropolitan areas. ''Metropolitan Area'' is defined in § 81.2 in terms of areas designated as such by OMB. These definitions give rise to an inconsistency, in that HUD routinely publishes area median family income estimates but, in some cases, determines them not for MSAs, or PMSAs, but rather for portions of such areas. For example, OMB defines the Washington D.C. PMSA to include Berkeley and Jefferson counties in West Virginia and Culpeper, King George and Warren counties in Virginia. However, HUD's published area income estimates for these five counties are based on the incomes specific to these counties, not the PMSA. Moreover, HUD's published area income estimates for the other counties in the Washington MSA are based on data pertaining to the remaining counties and disregarding data for these five counties. As another example, OMB defines the New York City PMSA to include Rockland and Westchester Counties. HUD's published area income estimates for these two counties are based on incomes specific to the counties, not the PMSA. HUD's published area income estimates for the other counties in the New York City PMSA are based on data pertaining to the entire New York City PMSA including Rockland and Westchester Counties. Such differences between HUD's published area estimates and MSAs have led to ambiguity concerning the appropriate determination of area incomes by the GSEs. HUD proposes to change the definition of ''Median Income'' to require the GSEs to use HUD estimates of median family income. As part of this change to the definition of ''Median Income,'' HUD would provide the GSEs, on an annual basis, with information specifying how HUD's published median family income estimates are to be applied.

c. *Underserved Area.* This rule proposes to revise the existing definition of ''Underserved Area'' to correct the parameters of rural underserved areas. The definition of rural underserved areas in § 81.2 has an ''income-only'' portion (*i.e.,* a median income at or below 95 percent of the state non-metropolitan median income or the nationwide non-metropolitan median income, whichever is greater) and ''income/minority'' portion (i.e., a median income at or below 120 percent of the state non-metropolitan median income and a minority population of at least 30 percent). In the preamble to the 1995 Final Rule, HUD explained that for the income only portion of the definition, the median income of a county would be compared to the greater of either the state or the nationwide non-metropolitan median income, in order to ensure that poor counties in poor states would be included in the definition. However, the 1995 Final Rule did not recognize this comparison in the ''income/minority'' portion. Therefore, this proposed rule would correct this oversight by proposing to revise the definition of ''Underserved Areas'' in § 81.2. This rule also proposes a specific change to this definition related to tribal lands and discusses other possible changes to the definition related to metropolitan and non-metropolitan (rural) areas. The changes are proposed are discussed below in Section B., 3., e., ''Central Cities, Rural Areas and Other Underserved Areas Housing Goal.''

B. Subpart B—Housing Goals

1. *Background.* The Department is required to establish, by regulation, annual housing goals for each GSE. The goals include a Low- and Moderate-Income Goal, a Special Affordable Housing Goal, and a Central Cities, Rural Areas, and Other Underserved Areas Housing Goal (the Geographically Targeted Goal). Section 1331(a) of FHEFSSA requires HUD to establish these goals in a manner consistent with sections 301(3) of the Fannie Mae Charter Act and 301(b)(3) of the Freddie Mac Charter Act, which require the GSEs ''to provide ongoing assistance to the secondary market for residential mortgages (including * * * mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities).'' Under section 1331(c) of FHEFSSA, HUD may, by regulation, adjust any housing goal from year to year.

In December 1995, HUD established housing goals for the GSEs for 1996–1999, revising and restructuring the transition goals that had been in effect for 1993–1995. The current housing goal levels, which were in place for 1996–1999, are:

A *Low- and Moderate-Income Housing Goal,* which focuses on mortgages on housing for families with incomes no greater than area median income (as defined by HUD),[52] and which was set at 40 percent of total units financed by each of the GSEs' mortgage purchases in 1996 and 42 percent for each calendar year from 1997 though 1999;

A *Geographically Targeted Goal,* which focuses on mortgages on properties located in ''underserved areas,'' defined as low-income and/or high-minority census tracts and rural counties (excluding high-income, high-minority tracts), and which was set at 21 percent of total units financed by each of the GSEs' mortgage purchases in 1996 and at 24 percent for each calendar year from 1997 through 1999;

A *Special Affordable Housing Goal,* which focuses on mortgages on housing for very low-income families and low-income families living in low-income areas, and which was set at 12 percent of total units financed by each of the GSEs' mortgage purchases in 1996 and at 14 percent for calendar each year from 1997 through 1999; and

A *Special Affordable Multifamily Housing Subgoal,* which focuses on mortgages on housing for very low-income families and low-income families living in low-income areas, in multifamily properties (defined as properties with five or more units), and which was set at a fixed amount of 0.8 percent of the total dollar volume of mortgages purchased by each GSE in 1994. This formula results in a subgoal of special affordable multifamily mortgage purchases totaling $1.29 billion per year for Fannie Mae and $988 million per year for Freddie Mac for each calendar year from 1996 through 1999.

These housing goals, excluding the special affordable multifamily housing subgoal, share common characteristics: (1) Annual goal levels are the same for both GSEs; (2) they are percentage based goals defined in terms of percentages of housing units financed; and (3) one unit may qualify for one or more goals. In addition, under the current regulation, goals were established based on consideration of the statutory factors and set for a four-year period from 1996 through 1999 to allow the GSEs time to develop long-range strategies.

A key factor in determining the level of the goals was and is the estimated

[52] 24 CFR 81.2.

size of the conventional market for each goal. In 1995, HUD estimated the low- and moderate-income share of the conventional market at 48–52 percent; the underserved (geographically targeted) areas share at 25–28 percent; and the special affordable share at 20–23 percent. These market estimates were based mainly on HMDA data for 1992 to 1994. Upon further analysis, however, these estimates are below what actual data shows for the period from 1995 to 1998. For example, HUD's 1995 market estimates underestimated the size of the rental market and did not anticipate the underlying strength and persistence of the affordable lending market. A large portion of new mortgages were originated for low-income families and first time homebuyers during the 1995 to 1998 period. Therefore, HUD estimates that the low- and moderate-income market accounted for 57–58 percent of all mortgages originated during the 1995 to 1997 period, and for 54 percent during the heavy refinancing year of 1998. Appendix D, ''Estimating the Size of the Conventional Conforming Market for each Housing Goal,'' provides other reasons that the actual market shares were higher than anticipated in HUD's 1995 estimates.

In accordance with FHEFSSA, HUD has re-estimated the market shares of the mortgages in the primary conventional market that would qualify for each of the GSEs' housing goals for the years 2000 through 2003.[53] HUD estimates that for the years 2000 through 2003 the low- and moderate-income share of the conventional market will be 50–55 percent, the underserved (geographically targeted) areas share of the market will be 29–32 percent, and the special affordable share will be 23–26 percent. Appendix D, ''Estimating the Size of the Conventional Conforming Market for Each Housing Goal,'' provides an extensive analysis of the Department's market share estimates.

The higher market estimates suggest that the gaps between the current goal levels and the market estimates of the opportunities available to the GSEs are wider than was anticipated in 1995. As with the 1995 estimates, these new market estimates also allow for more adverse economic conditions than recently experienced. For example, the lower end—50 percent—of the range for the low- and moderate-income market estimate is consistent with low- and moderate-income borrowers accounting for 35 percent of home purchase loans in the single-family owner market. (The remainder of the low- and moderate-income market share estimate includes multifamily and single family rental properties.) Since the 1992–98 average for the low- and moderate-income share of the home purchase market was 41 percent, and the more recent 1995–1998 average was 42 percent, some leeway is allowed for more adverse income and interest rate conditions. Such leeway may be needed since it is possible that the affordable housing market may not continue at current rates, particularly if there is a slowdown in economic activity.

While the single family affordable market has not changed substantially since 1995 when HUD developed its first market estimates, HUD has revised its new market estimates upward based upon its analyses of the underlying strength of the single family affordable market. That market has been consistently strong for the past six years (1993–1998). When HUD produced the market estimates in 1995, the data was limited to the early 1990s, during which 1993 and 1994 demonstrated the strongest affordable housing markets. Now, with four additional years (1995 to 1998) of data indicating consistent trends in the affordable market, HUD is more confident about the underlying strength of this market.

At the same time, HUD has used assumptions about future economic and market conditions that are more conservative than those that have actually prevailed over the last six years. HUD is well aware of the volatility of mortgage markets and their possible impacts on the GSEs' ability to meet the housing goals. HUD's market estimates have also changed to a small extent by including manufactured housing loans in the single family owner market, and slightly increasing the affordability and underserved area parameters for rental housing.

Under HUD's current regulations, the current levels of the housing goals remain in effect in 2000 and thereafter until such time as the Department establishes new annual housing goals. In this rule, HUD is proposing to establish new levels for the three housing goals and for the special affordable multifamily housing subgoal for the years 2000 through 2003. The housing goals as proposed would be phased in beginning in calendar year 2000 and would be fully in place in calendar years 2001, 2002 and 2003. In proposing the level of the housing goals for 2000 and thereafter, HUD has applied the statutory factors and also has concluded that the goals should be set far enough into the future to allow the GSEs to engage in long-term planning.

2. *Section 81.12 Low- and Moderate-Income Housing Goal.* This section discusses the Department's consideration of all the statutory factors in arriving at its proposed new housing goal level for the Low- and Moderate-Income Housing Goal. Additional information analyzing each of the statutory factors is provided in Appendix A, ''Departmental Considerations to Establish the Low- and Moderate-Income Housing Goal,'' and Appendix D, ''Estimating the Size of the Conventional Conforming Market for each Housing Goal.''

a. *Definition.* The Low- and Moderate-Income Housing Goal counts mortgages on housing for families with incomes not in excess of area median incomes.

b. *Market Estimate for the Low- and Moderate Income Housing Goal in 2000.* The Department estimates that dwelling units serving low- and moderate-income families will account for 50–55 percent of total units financed in the overall conventional conforming mortgage market during the period 2000 through 2003. Due to inherent uncertainty about future market conditions, HUD has developed a plausible range, rather than a point estimate, for the market. The detailed analyses underlying this estimate are presented in Appendix D, ''Estimating the Size of the Conventional Conforming Market for Each Housing Goal.''

c. *Past Performance of the GSEs Under the Low- and Moderate-Income Housing Goal.* HUD's current goals specified that in 1996 at least 40 percent of the number of units financed by mortgage purchases of the GSEs and eligible to count toward the Low- and Moderate-Income Goal should qualify as low- and moderate-income, and at least 42 percent should qualify in each year from 1997 through 1999. Fannie Mae surpassed these goal levels by 5.6 percentage points in 1996, 3.7 percentage points in 1997, and 2.1 percentage points in 1998. Freddie Mac surpassed the goals by 1.1 percentage points, 0.6 percentage point and 0.9 percentage point in 1996, 1997 and 1998, respectively. The GSEs' performance under the Low- and Moderate-Income Housing Goal for the 1996 through 1998 period is summarized below:

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[53] The goal-qualifying market shares are estimated for the years 2000–2003 under several projections about the relative sizes of the single family and multifamily markets. Numerous sensitivity analyses that consider alternative market and economic conditions are examined in Appendix D.

SUMMARY OF GSE PERFORMANCE UNDER THE LOW- AND MODERATE-INCOME HOUSING GOAL[1]

	1996	1997	1998
Required Goal Level	40%	42%	42%
Fannie Mae:			
Percent Low-and Moderate-Income	45.6%	45.7%	44.1%
Freddie Mac:			
Percent Low-and Moderate-Income	41.1%	42.6%	42.9%

[1] The figures presented for goal performance are based on HUD analysis of the GSEs' loan level data. Some results differ marginally from the corresponding figures presented by Fannie Mae and Freddie Mac in their respective Annual Housing Activities Reports (AHARs) to HUD, reflecting differences in application of counting rules.

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During the transition period from 1993 through 1995, Fannie Mae's performance under the Low- and Moderate-Income Housing Goal jumped sharply in one year, from 34.2 percent in 1993 to 44.8 percent in 1994, before tailing off to 42.3 percent in 1995. It then stabilized at just over 45 percent in 1996 and 1997. Fannie Mae's performance in 1998 declined to 44.1 percent due in large measure to the high volume of refinance loans that Fannie Mae funded in 1998.

During the transition period, Freddie Mac demonstrated steadier gains in performance under the Low- and Moderate-Income Housing Goal, from 29.7 percent in 1993 to 37.4 percent in 1994 and 38.9 percent in 1995. Freddie Mac then achieved 41.1 percent in 1996, and 42.6 percent and 42.9 percent in 1997 and 1998, respectively. Fannie Mae's performance on the Low- and Moderate-Income Housing Goal has surpassed Freddie Mac's in every year. Nonetheless, Freddie Mac's 1998 performance represented a 44 percent increase over its 1993 level, exceeding the 29 percent increase for Fannie Mae. Freddie Mac's performance was 97 percent of Fannie Mae's low- and moderate-income share in 1998, the highest ratio since the goals took effect in 1993. Freddie Mac's improved performance is due mainly to its increased purchases of multifamily loans as it has become more active in this market. Some housing industry observers believe that the Low- and Moderate-Income Housing Goal has been an important factor explaining Freddie Mac's re-entry into the multifamily market.

In fact, multifamily purchases represent a significant component of both GSEs' activities in meeting the Low- and Moderate-Income Housing Goal, even though multifamily loans comprise a relatively small portion of the GSEs' business activities. In 1997, while Fannie Mae's multifamily purchases represented only 13.4 percent of its total acquisition volume measured in terms of dwelling units, these purchases comprised 26.7 percent of units qualifying for the Low- and Moderate-Income Housing Goal. Multifamily purchases were 8.2 percent of the units financed by Freddie Mac's 1997 mortgage purchases but were 19 percent of Freddie Mac's low- and moderate-income mortgage purchases.

The GSEs' 1998 performance took place in the context of a record level of mortgage originations, with unusually high refinance volume reaching 50 percent of single family mortgage originations. The GSEs relied upon a record volume of multifamily mortgage purchases in 1998—$12.5 billion for Fannie Mae and $6.6 billion for Freddie Mac—to exceed the 42 percent goal.

d. *Proposed Goal Levels for 2000–2003.* Having considered all statutory factors including housing needs, projected economic and demographic conditions for 2000 to 2003, the GSEs' past performance, the size of the market serving low- and moderate-income families, and the GSEs' ability to lead the market while maintaining a sound financial condition; HUD is proposing that the annual goal for mortgage purchases qualifying under the Low- and Moderate-Income Housing Goal be 48 percent of eligible units financed in calendar year 2000, and 50 percent of eligible units financed in each of calendar years 2001, 2002 and 2003. This proposed goal level is intended to increase the GSEs' current level of performance to a level that is consistent with reasonable estimates of the low- and moderate-income housing market. HUD's detailed findings under the statutory factors for establishing the goal are described in Appendix A, ''Departmental Considerations to Establish the Low- and Moderate-Income Housing Goal,'' and Appendix D, ''Estimating the Size of the Conventional Conforming Market for Each Housing Goal.''

3. *Section 81.13—Central Cities, Rural Areas, and Other Underserved Areas Housing Goal.* This section discusses the Department's consideration of all the statutory factors in arriving at its proposed new housing goal level for the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal (the Geographically Targeted Goal). Additional information analyzing each of the statutory factors is provided in Appendix B, ''Departmental Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Goal,'' and Appendix D, ''Estimating the Size of the Conventional Conforming Market for Each Housing Goal.'' This section also discusses possible changes being considered to the definition of underserved areas.

a. *Definition.* The Geographically Targeted Goal focuses on areas currently underserved by the mortgage finance system. The 1995 Final Rule provides that for properties in metropolitan areas, mortgage purchases count toward the Geographically Targeted Goal if such purchases finance properties that are located in underserved census tracts. In § 81.2, HUD defined ''underserved areas'' as areas where either: (1) The tract median income is at or below 90 percent of the area median income (AMI); or (2) the minority population is at least 30 percent and the tract median income is at or below 120 percent of AMI. The AMI ratio is calculated by dividing the tract median income by the MSA median income. The minority percent of a tract's population is calculated by dividing the tract's minority population by its total population.

For properties in non-metropolitan (rural) areas, mortgage purchases count toward the Geographically Targeted Goal where such purchases finance properties that are located in underserved counties. These are defined as counties where either (1) the median income in the county does not exceed 95 percent of the greater of the state or nationwide non-metropolitan median income; or (2) minorities comprise at least 30 percent of the residents and the median income in the county does not exceed 120 percent of the state non-metropolitan median income.

b. *Market Estimate for the Geographically Targeted Goal.* The Department estimates that dwelling units in underserved areas will account for 29–32 percent of total units financed in the overall conventional conforming mortgage market during the period 2000 through 2003. Due to inherent uncertainty about future market conditions, HUD has developed a plausible range, rather than a point estimate, for the market. The detailed analyses underlying this estimate are presented in Appendix D, ''Estimating the Size of the Conventional Conforming Market for Each Housing Goal.''

c. *Past Performance of the GSEs Under the Geographically Targeted Goal.* HUD's goals specified that in 1996 at least 21 percent of the units financed by the GSEs' mortgage purchases should count toward the Geographically Targeted Goal, and at least 24 percent in 1997 through 1999. Fannie Mae surpassed the goal by 7.1 percentage points in 1996, 4.8 percentage points in 1997, and 3.0 percentage points in 1998. Freddie Mac surpassed the goal by 4.0, 2.3 and 2.1 percentage points in 1996, 1997 and 1998, respectively. The GSEs' performance for the 1996–98 period is summarized below:

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SUMMARY OF GSE PERFORMANCE UNDER THE THE GEOGRAPHICALLY TARGETED GOAL[1]

	1996	1997	1998
Required Goal Level	21%	24%	24%
Fannie Mae:			
Percent Geographically Targeted	28.1%	28.8%	27.0%
Freddie Mac:			
Percent Geographically Targeted	25.0%	26.3%	26.1%

1 The figures presented for goal performance are based on HUD's analysis of the GSEs' loan level data. Some results differ marginally from the corresponding figures presented by Fannie Mae and Freddie Mac in its AHARs, reflecting differences in application of counting rules.

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Although both GSEs have improved their performance in underserved areas, on average, their mortgage purchases continue to lag the primary market in providing financing for affordable loans in underserved neighborhoods. During the 1996–1998 period, underserved areas accounted for 19.9 percent of Freddie Macs purchases of single family home mortgages compared with 22.9 percent of Fannie Mae's purchases, 25.8 percent of mortgages retained by portfolio lenders, and 24.9 percent of all home purchase mortgages originated in the conventional conforming market. As these figures indicate, Freddie Mac has been less likely than Fannie Mae to purchase mortgages on properties in underserved neighborhoods. Freddie Mac has not made progress in reducing the gap between its performance and that of the overall market. In 1992, underserved areas accounted for 18.6 percent of Freddie Mac's purchases of home purchase mortgages and for 22.2 percent of home loans originated in the conforming market, which yields a ''Freddie Mac-to-Market'' ratio [54] of 0.84 percent. By 1998, the ''Freddie Mac-to-Market'' ratio had actually fallen to 0.81 percent. During the same period, the ''Fannie Mae-to-Market'' ratio increased from 0.82 percent to 0.93 percent.

Fannie Mae's performance under this goal improved due to its increased purchases during 1997 and 1998 of mortgages originated in prior years in underserved neighborhoods. For instance, Fannie Mae's purchases of single family home mortgage loans in underserved areas increased from 22.3 percent in 1996 to 23.5 percent in 1997. However, the percentage of Fannie Mae's purchases of newly originated mortgages on dwellings in underserved areas was lower in 1997 (20.8 percent) than in 1996 (21.9 percent). This decline was offset by the fact that a high percentage (30.1 percent) of Fannie Mae's purchases in 1997 of prior year mortgages were home mortgage loans on properties in underserved areas. This focus on prior year mortgages explains why Fannie Mae's performance increased across several affordable lending categories between 1996 and 1997. Fannie Mae's purchases of prior year affordable housing loans continued in 1998.

In evaluating the GSEs' past performance, it should be noted that while borrowers in underserved metropolitan areas tend to have much lower incomes than borrowers in other areas, this does not mean that GSE purchase activity in underserved areas derives totally from lower income families. In 1997, above median-income households accounted for 37 percent of the mortgages the GSEs purchased in underserved areas.

d. *Proposed Goal Levels for 2000–2003.* Having considered all statutory factors including housing needs, projected economic and demographic conditions for 2000 to 2003, the GSEs' past performance, the size of the market for central cities, rural areas and other underserved areas, and the GSEs' ability to lead the market while maintaining a sound financial condition; HUD is proposing that the annual goal for mortgage purchases qualifying under the Geographically Targeted Goal be 29 percent of eligible units financed in calendar year 2000, and 31 percent of eligible units financed in each of calendar years 2001, 2002 and 2003. This proposed goal level is intended to increase the GSEs' current level of performance to a level that is consistent with reasonable estimates of the housing market in underserved areas. The Department's detailed findings under the statutory factors for establishing the goal are described in Appendix B, ''Departmental Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Goal,'' and Appendix D, ''Estimating the Size of the Conventional Conforming Market for Each Housing Goal.''

e. *Proposed Definitional Changes for Underserved Areas.* (1) Metropolitan Areas. The Department is seeking comments on possible changes to the current metropolitan underserved areas definition in an effort to more accurately target underserved areas with higher mortgage denial rates and thereby promote access to mortgage credit nationwide. Specifically, HUD is considering changing the current tract income ratio to an ''enhanced'' tract income ratio and requiring that for tracts to qualify they must have an enhanced tract income ratio at or below 80 percent of area median income. The enhanced tract income ratio described below would make the underserved areas definition used by the GSEs consistent with the requirements of Federally insured depository institutions under the Community Reinvestment Act (CRA).

The ''enhanced'' option is two-fold. First, it would change the tract income ratio (described in the definition of ''central city'' or ''other underserved area'' in paragraph (1) of the definition of ''Underserved areas'' in § 81.2) from one that is calculated using MSA median income to one that is based on the greater of either the national metropolitan median income or the MSA median income. This approach would ensure that low-income census tracts in low-income MSAs are classified as underserved. With this change, 994 tracts, with an average mortgage denial rate of 26.8 percent, would be added to the scope of the current definition.

Second, the enhanced option would change the level of the income ratio required in paragraph (1)(ii) of the definition of ''Underserved areas.'' Tracts would qualify as underserved if their income ratio were 80 percent as compared to a tract income ratio of 90 percent under the current definition. With this change, 2,500 tracts, with an average mortgage denial rate of 17.8 percent, would be dropped from the scope of the current definition. Of the tracts that would be dropped, the mortgage denial rate is not much higher than the average mortgage denial rate for all metropolitan areas, which is 15.3 percent. This suggests that these areas are not experiencing severe problems in obtaining mortgage credit and should not be targeted. The overall number of tracts that would qualify with both parts of the enhanced option is 20,093, with an average mortgage denial rate of 25.0 percent.

Although the Department preliminarily favors adopting a definitional change based on the enhanced tract income option described above, another approach to targeting high mortgage denial areas is to increase the alternative requirement for an underserved area by increasing the minority concentration required from the current 30 percent to 50 percent. Adopting this option would exclude many tracts with high mortgage denial rates. This option would drop 1,045 tracts with a relatively high mortgage denial rate of 20.2 percent. Nevertheless, this proposal should stimulate conventional lending in high minority neighborhoods that have been traditionally underserved.

Either of the possible changes to the existing definition for underserved areas would likely affect the estimated market share for the Geographically Targeted Goal. If either of the possible changes were adopted, the Department would revise its market estimates of underserved areas accordingly and the level of the housing goal as needed to reflect the revised estimates.

HUD seeks comment on the proposed options for revising the definition of underserved metropolitan areas, including the extent to which these definitional changes are likely to increase the availability of credit to areas with high mortgage denial rates.

[54] GSE to market ratio is calculated by dividing the performance of the respective GSE by the performance of the market.

(2) Tribal Lands. In reviewing the criteria for underserved areas, HUD believes that difficulties in obtaining mortgage loans on qualifying American Indian Reservations and trust lands deserve attention. A February 1998 report by the General Accounting Office (GAO) concerning lending on tribal lands found that, during a five year period from 1992 through 1996, only 91 conventional home purchase loans were made to Native Americans on trust lands.[55] The eight lenders making these loans held all of them in portfolio. In addition, government-backed loans were insured by HUD under its Section 184 and Section 248 programs which promote affordable housing opportunities for Native American families, and through programs of the Department of Veterans Affairs, the U.S. Department of Agriculture, and the Federal Home Loan Banks. Fannie Mae has consistently purchased Section 184 loans, and Freddie Mac has recently become involved in this program.

A number of reservations cross county and census tract lines with a portion of the reservation in a county that is otherwise considered high-income and/or low-minority and a portion of the reservation in a county that is neither. Part of a reservation, therefore, may be considered an underserved area and part a served area. To remedy such anomalies, this rule proposes that reservations and trust lands would be considered separate geographic entities rather than parts of the counties in which they are located. Thus, in a non-metropolitan area, median income for the reservation would be compared with state (or national) non-metropolitan median income in determining whether the reservation is an ''underserved area;'' and in a metropolitan area, median income for the reservation would be compared with the median income of the respective metropolitan area.

HUD has determined that currently 173 non-metropolitan counties that contain Indian reservations or trust lands are classified as underserved areas and 88 such counties are classified as served areas. In metropolitan areas, 131 census tracts that contain Indian reservations or trust lands are currently classified as underserved areas and 115 such tract are classified as served areas. Inclusion of qualifying Indian reservations and trust lands in these 88 counties and 115 census tracts as underserved areas in calculating the Geographically Targeted Goal would not automatically be expected to have a major impact on lending in these areas, at least initially, but it could heighten awareness and encourage future growth in conventional mortgage lending to these areas.

Based on this analysis, the Department proposes to revise § 81.2 to designate all qualifying Indian reservations and trust lands as underserved areas.

(3) Rural Areas. The current definition of underserved non-metropolitan or rural areas under the Geographically Targeted Goal accounts for 53 percent of the households, 57 percent of the census tracts, and 66 percent of the counties in rural areas. Unlike the underserved definition for metropolitan areas, which is based on the minority or low-income concentration of census tracts, the non-metropolitan/rural underserved definition is based on these criteria for counties. During the 1995 rulemaking process, experts on rural lending informed HUD that lenders' business operations in rural areas are oriented toward counties, not census tracts. In addition, counties are easy to identify and geocode, which facilitates the reporting process for lenders who provide the GSEs with loan-level data on mortgages. However, HUD recognized then, and experience has borne out, that, under its county-based definition, the GSEs can achieve the goal by purchasing mortgages located in the parts of underserved counties that have higher incomes.

The broad nature of the underserved definition for non-metropolitan areas raises at least two concerns. The first concern is that the broad definition appears to result in similar borrower characteristics in served and underserved counties. HUD's analysis indicates that the GSEs are less likely to purchase loans for first-time homebuyers and more likely to purchase mortgages for high-income borrowers in underserved than in served counties. Mortgages to first-time homebuyers account for 13.9 percent of the GSEs' mortgage purchases in served counties compared with 12.3 percent in underserved counties. Interestingly, it is more likely for borrowers in underserved counties (71.2 percent) to have incomes above the county median than in served counties (65.5 percent). These findings support the claim that, in rural underserved counties, the GSEs purchase mortgages of borrowers who probably encounter few obstacles to obtaining mortgage credit. Further, mortgages purchased by the GSEs in underserved areas do not have low down payments. In both served and underserved counties, only 27 percent of the GSEs' mortgage purchases have loan-to-value ratios above 80 percent.

Defining underserved areas in terms of an entire county also appears to encourage the GSEs to purchase mortgages in the more affluent tracts. HUD's analysis shows that even though the GSEs purchase a greater percentage of mortgages in high-minority and low-income tracts in underserved than in served counties, they purchase nearly the same percentage of mortgages in both underserved and served counties in high-income tracts. In underserved counties, 12.3 percent of the GSEs' mortgage purchases are in tracts above 120 percent area median income compared with 14.6 percent in served counties.

There are few conclusive studies on access to mortgage credit in rural areas, and the studies that do exist suggest only broad conclusions about credit flows in these areas. Moreover, evaluating which rural locations are underserved in terms of access to mortgage credit cannot be done with HMDA data on which HUD mainly relied in defining urban underserved areas. Other data bases available with mortgage market information have similar limitations with regard to coverage of mortgage activity in rural areas. Nonetheless, based on an analysis of the GSEs' mortgage purchases by tract median income, it does not appear that the current county definition is encouraging the GSEs to target their mortgage purchases to the most underserved portions of rural areas.

For these reasons, the Department is seeking public comment on alternative methodologies and sources of rural market data that HUD might use to define underserved non-metropolitan/rural areas. Specifically, HUD seeks comment on whether the Department should follow a tract-based approach in defining underserved rural areas, which would be consistent with the tract-based definition used in metropolitan areas. As technology and computer mapping capabilities have evolved since 1995, it may be appropriate to revisit the issue of whether entire counties or census tracts within the counties should be used to define rural underserved areas.

4. *Section 81.14 Special Affordable Housing Goal.* This section discusses the Department's consideration of all the statutory factors in arriving at its proposed new housing goal level for the Special Affordable Housing Goal. Additional information analyzing each of the statutory factors is provided in Appendix C, ''Departmental Considerations to Establish the Special Affordable Housing Goal,'' and Appendix D, ''Estimating the Size of the Conventional Conforming Market for Each Housing Goal.'' This section also

[55] GAO/RCED–98–49.

discusses possible changes being considered to the structure of the multifamily subgoal.

a. *Definition.* The Special Affordable Housing Goal targets mortgages on housing for very low-income families and low-income families living in low-income areas. Units that count toward the Special Affordable Housing Goal include units occupied by low-income owners and renters in low-income areas, and very-low-income owners and renters. In addition, low-income rental units in multifamily properties in which at least 20 percent of the units are affordable to families whose incomes are 50 percent of area median income, or less, or where at least 40 percent of the units are affordable to families whose incomes are 60 percent area median income, or less, count toward the goal.

b. *Market Estimate for the Special Affordable Housing Goal.* The Department estimates that dwelling units serving very low-income families and low-income families living in low-income areas will account for 23–26 percent of total units financed in the overall conventional conforming mortgage market during the period 2000 through 2003. Due to inherent uncertainty about future market conditions, HUD has developed a plausible range, rather than a point estimate, for this market. The detailed analyses underlying this estimate are presented in Appendix D, ''Estimating the Size of the Conventional Conforming Market for Each Housing Goal.''

c. *Past Performance of the GSEs' Under the Special Affordable Housing Goal.* The Special Affordable Housing Goal is designed to ensure that the GSEs consistently focus on serving the very low-and low-income portion of the housing market. However, analysis of American Housing Survey and HMDA data show that the shares of mortgage loans for very low-income homebuyers are smaller for the GSEs' mortgage purchases than for depository institutions and others originating mortgage loans in the conforming conventional market. HUD's analysis suggests that the GSEs should improve their performance in providing financing for the very low-income housing market.

HUD's goals specified that in 1996 at least 12 percent of the number of units eligible to count toward the Special Affordable Housing Goal should qualify as special affordable, and at least 14 percent in 1997 through 1999. As indicated below, Fannie Mae surpassed the goal by 3.4 percentage points in 1996, 3.0 percentage points in 1997 and 0.3 percentage point in 1998. Freddie Mac surpassed the goal by 2.0, 1.2, and 1.9 percentage points in 1996, 1997 and 1998, respectively. The GSEs' performance for the 1996–95 period is summarized below:

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SUMMARY OF GSE PERFORMANCE UNDER THE SPECIAL AFFORDABLE HOUSING GOAL[1]

	1996	1997	1998
Required Goal Level	12%	14%	14%
Fannie Mae:			
Special Affordable Housing Goal	15.4%	17.0%	14.3%
Freddie Mac:			
Special Affordable Housing Goal	14.0%	15.2%	15.9%

[1] The figures presented for goal performance are based on HUD's analysis of the GSEs' loan level data. Some results differ from the corresponding figures presented by Fannie Mae in its AHARs by one to two percentage points. The difference largely reflects differences between HUD and Fannie Mae in application of counting rules relating to counting of seasoned mortgage loans for purposes of this goal. Freddie Mac's AHAR figures for this goal differ marginally from the official figures presented above, also reflecting differences in application of counting rules.

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HMDA and GSE data for metropolitan areas show that both GSEs lag depository institutions and other lenders in providing financing for home loans that qualify for the Special Affordable Housing Goal. Special affordable loans, which include loans for very low-income borrowers and low-income borrowers living in low-income areas, accounted for 9.8 percent of Freddie Mac's purchases of home purchase mortgages during 1996–98, 11.9 percent of Fannie Mae's purchases, 16.7 percent of newly originated loans retained by depository institutions, and 15.3 percent of all new originations in the conventional conforming market. While Freddie Mac has improved its special affordable lending over the past few years, it has not made as much progress as Fannie Mae in closing the gap with depository institutions and other lenders in the home loan market. In 1998, Freddie Mac's special affordable performance was 73 percent of the primary market proportion of home loans that would qualify under the Special Affordable Housing Goal, compared to Fannie Mae's performance of 85 percent during the same period.

The multifamily market is especially important in the establishment of the Special Affordable Housing Goal for Fannie Mae and Freddie Mac because of the relatively high percentage of multifamily units meeting the Special Affordable Housing Goal. In 1997, 57 percent of units financed by Freddie Mac's multifamily mortgage purchases met the Special Affordable Housing Goal, representing 31 percent of units counted toward its Special Affordable Housing Goal, at a time when multifamily units represented only eight percent of its total purchase volume. Corresponding percentages for Fannie Mae's multifamily purchases were: 54 percent of units financed by Fannie Mae's multifamily mortgage purchases met the Special Affordable Goal, multifamily units represented 44 percent of units meeting the Special Affordable Goal but only 13 percent of total purchase volume. In comparison, HUD estimates that multifamily mortgages accounted for 20 percent of the total number of dwelling units financed in the conventional conforming market in 1997.

d. *Proposed Goal Levels for 2000–2003.* Having considered all statutory factors including housing needs, projected economic and demographic conditions for 2000 to 2003, the GSEs' past performance, the size of the market serving very low-income families and low-income families living in low-income areas, and the GSEs' ability to lead the market while maintaining a sound financial condition; HUD is proposing that the annual goal for mortgage purchases qualifying under the Special Affordable Housing Goal be 18 percent of eligible units financed in calendar year 2000, and 20 percent of eligible units financed in each of calendar years 2001, 2002 and 2003. This proposed goal level is intended to increase the GSEs' current level of performance to a level that is consistent with reasonable estimates of the special affordable housing market. The Department's detailed findings under the statutory factors for establishing the goal are described in Appendix C, ''Departmental Considerations to Establish the Special Affordable Housing Goal,'' and Appendix D, ''Estimating the Size of the Conventional Conforming Market for Each Housing Goal.''

e. *The Multifamily Subgoal.* Under the Special Affordable Housing Goal, HUD established a subgoal for purchases of multifamily mortgages. HUD established this subgoal at 0.8 percent of the dollar value of each GSE's respective 1994 dollar purchase volume, including both single family and multifamily mortgage purchases. This yielded subgoals of $988 million for Freddie Mac and $1.29 billion for Fannie Mae.[56]

Freddie Mac narrowly exceeded the subgoal in 1996 and 1997, with multifamily special affordable acquisitions of $1.1 billion and $1.2 billion, respectively. Freddie Mac exceeded the goal by a wider margin in 1998, when it purchased $2.7 billion in multifamily special affordable loans. Fannie Mae has consistently surpassed its multifamily subgoal, with multifamily mortgage purchases of $2.4 billion in 1996, $3.2 billion in 1997, and $3.5 billion in 1998.[57]

Approximately half of the GSEs' annual multifamily purchase volume usually qualifies toward the Special Affordable Housing Goal. Moreover, multifamily acquisitions typically represent a significant proportion of all GSE purchases qualifying toward the Special Affordable Housing Goal. As noted earlier, multifamily acquisitions contributed 44.0 percent of units qualifying toward Fannie Mae's Special Affordable Housing Goal, with a corresponding figure of 31.4 percent for Freddie Mac.

One of the Department's principal objectives in establishing the subgoal was to ensure Freddie Mac's re-entry into the multifamily market. In 1991–1993, following losses on multifamily mortgage loans, Freddie Mac had virtually no multifamily mortgage purchase capacity. Over the past five years, however, Freddie Mac has built new capacity to support its multifamily mortgage purchase activity and has expanded its presence in the multifamily financing market to the point that it purchased $6.6 billion of multifamily mortgages in 1998. Industry observers believe that the special affordable multifamily subgoal has contributed toward a significantly increased presence by Freddie Mac in the multifamily market.

Fannie Mae was well established in the multifamily mortgage market prior to the establishment of the multifamily special affordable subgoal. Fannie Mae's performance has consistently surpassed the subgoal by a wide margin, as noted above.

f. *Proposed Multifamily Subgoal Level.* The Secretary proposes to retain the special affordable multifamily subgoal for each of the calendar years for the period 2000 through 2003, and to increase the fixed minimum level to 0.9 percent of the dollar volume of combined (single family and multifamily) 1998 mortgage purchases in calendar year 2000, and 1.0 percent of the dollar volume of combined (single family and multifamily) 1998 mortgage purchases in each of calendar years 2001, 2002 and 2003. This approach is consistent with the approach taken under the current regulations.

The proposed subgoal would establish the following new annual thresholds for the two GSEs.[58]

	2000	2001–2003
Proposed Goal Levels	0.9 percent	1.0 percent.

[56] Mortgages that are backed by properties that include both special affordable and other units are counted by multiplying the acquisition unpaid principal balance by the number of units qualifying for the Special Affordable Housing Goal, divided by the total number of units.

[57] These figures are as determined by HUD based on its analysis of GSE loan-level data. They differ somewhat from figures reported by the GSE in their Annual Housing Activities Reports submitted annually to HUD due to differences in application of counting rules, and for other reasons.

[58] HUD has determined that the total dollar volume of the GSEs' combined (single and multifamily) mortgage purchases in 1998, measured in unpaid principal balance at acquisition, was as follows: Fannie Mae $367.589 million: Freddie Mac $273, 231 million.

	2000	2001–2003
Fannie Mae	$3.31 billion	$3.68 billion.
Freddie Mac	$2.46 billion	$2.73 billion.

The proposed subgoal levels can be compared with Fannie Mae's 1998 performance of $3.5 billion, and Freddie Mac's 1998 multifamily special affordable multifamily acquisition volume of $2.7 billion. A 1.0 percent dollar-based multifamily subgoal for 2001–2003 would sustain and likely increase the efforts of both GSEs in the multifamily mortgage market, with particular emphasis upon the special affordable segment.

g. *Alternative Approaches to Setting the Subgoal Level.* A possible consequence of the subgoal as proposed, however, is that, to the extent that the GSEs experience certain fixed transactions costs in each multifamily acquisition, they can attain the special affordable multifamily subgoal with the smallest possible transactions costs by purchasing multifamily mortgages with large unpaid principal balances that have a high proportion of units that qualify for the Special Affordable Housing Goal. This approach, therefore, could foster the GSEs' purchases of loans on large properties with more than 50 units, the market for which is already relatively liquid, at the expense of loans on smaller properties, a sector which has not benefited from same degree of exposure to secondary markets, as discussed in Appendix A. In order to provide incentives for a greater commitment by the GSEs in the market for mortgages on small multifamily properties with 5–50 units, the Department is proposing to award ''bonus points'' for purchases of such loans, as described below.

A further consequence of a dollar-based goal is that the number of mortgages the GSEs would be required to purchase under the subgoal, and the number of units in the associated properties, would both be expected to decrease over the goals period, due to the effects of inflation and an expected rise in property values over the period of years during which the subgoal is in effect. For example, the rise in multifamily property values over 1996–1998 contributed to an increase in per-unit loan amounts in the GSEs' multifamily special affordable purchases of approximately 15 percent, with a commensurate decrease in the number of units corresponding to the minimum dollar-based purchase volume required under the multifamily special affordable subgoal.

While this proposed rule specifically proposes a dollar-based subgoal, the Department is considering three alternative approaches to structuring the special affordable multifamily subgoal—a unit-based subgoal, a subgoal based on a percentage of multifamily acquisitions, and a mortgage-based subgoal. These approaches may be structured as outlined in the following options. Additional discussion of these subgoal options in relation to GSE past performance is contained in Appendix C.

(1) *Option One—Subgoal Based on Number of Units.* In this approach, the multifamily special affordable subgoal would be expressed as a minimum number of units meeting the Special Affordable Housing Goal. A multifamily subgoal for 2001–2003 established at the level of the dollar-based subgoal defined above, divided by $22,953, which is the average of Fannie Mae's and Freddie Mac's ratios of unpaid principal balance to the number of units in multifamily properties counted toward the Special Affordable Housing Goal in 1997 (as determined by HUD), would generate annual multifamily special affordable subgoals of 160,328 units per year for Fannie Mae and 118,939 units per year for Freddie Mac. Such a multifamily subgoal for 2001–2003 would sustain and likely increase the efforts of both GSEs in the multifamily mortgage market, with particular emphasis upon the special affordable segment.[59]

A unit-based subgoal would result in a greater level of affordability among the GSEs' special affordable purchases than does a dollar-based subgoal. This conclusion is based on GSE loan-level data which shows that the more affordable the unit, the smaller is the associated unpaid principal balance per unit. Therefore, a subgoal based on number of units provides the GSEs with an incentive to purchase mortgages on properties with relatively low loan amounts per unit and, as a result, relatively high affordability, as the least costly method of attaining the subgoal. This unit-based approach also avoids the problem associated with the effects of inflation discussed above in regard to the proposed dollar based subgoal.

However, this approach also has one of the same consequences as the proposed subgoal based on dollar volume of acquisitions, in that a GSE can attain such a subgoal with the smallest possible transactions costs by purchasing a few multifamily mortgage loans with large unpaid principal balances which have a high proportion of units qualifying for the Special Affordable Housing Goal. This approach, therefore, may foster the GSEs' purchase of loans on large multifamily properties, which are already relatively well served by the mortgage market, at the expense of loans on smaller properties.

(2) *Option Two—Subgoal As A Percent of GSEs' Current Multifamily Mortgage Purchases.* Another possible approach is to establish the special affordable multifamily subgoal as a minimum percentage of each GSE's current total dollar volume of multifamily mortgage purchases. For example, the subgoal level for 2001–2003 could be expressed as 58 percent of a GSE's multifamily dollar volume in 2001, 2002 and 2003, respectively.[60]

An advantage of expressing the subgoal in this manner is that it would be flexible, increasing and decreasing in a manner commensurate with the overall presence of the GSEs in the current-year multifamily market. It would not require a fixed quantity of units, or fluctuate based on the GSEs' involvement with the single-family market.

An operational disadvantage is that such a subgoal could undermine the GSEs' incentive to expand multifamily volume that has existed since 1994. For example, one of the GSEs, having met its special affordable multifamily subgoal by the end of the third quarter in a calendar year, could decide to withdraw from the multifamily market in the fourth quarter in order to avoid the possibility of not attaining the subgoal at the end of the year due to the uncertainty regarding the affordability characteristics of multifamily mortgages offered for sale during the remainder of the year. In order to mitigate any such disincentive effects, HUD could establish an ''alternative minimum'' subgoal floor based on dollar volume, units, or mortgages. However, this

[59] If this option were selected, appropriate subgoal thresholds for the one-year transition period (2000) could be developed along the lines of those proposed under the multifamily special affordable subgoal above.

[60] If this option were selected, appropriate subgoal thresholds for the one-year transition period (2000) could be developed.

would open the possibility that a GSE might choose to simply orient its multifamily business toward the required alternative minimum amount of multifamily mortgage purchases.

(3) *Option Three—Subgoal Based on Number of Mortgages Acquired.* Because the GSEs incur relatively large fixed costs in purchasing multifamily mortgage loans, another alternative to the Special Affordable Multifamily Housing Subgoal would be to establish a subgoal based on the number of mortgages acquired. In this approach, the Special Affordable multifamily subgoal would be expressed as a minimum number of each GSEs' total mortgage purchases. If all the units in the property securing the mortgage are not eligible for the Special Affordable Housing Goal, then subgoal performance would be pro-rated based on the number of qualifying units. In other words, if one mortgage secured a 100-unit property and 50 of the units qualified for the Special Affordable Housing Goal, then subgoal credit would be counted as one-half of a mortgage.[61]

A multifamily subgoal for 2001–2003 established at 0.035 percent of the number of mortgages acquired by each of the GSEs in 1998 (as determined by HUD) would generate annual subgoals of 1,129 multifamily special affordable mortgages for Fannie Mae and 854 for Freddie Mac.[62] A 0.035 percent mortgage-based multifamily subgoal for 2001–2003 would sustain and likely increase the efforts of both GSEs in the multifamily mortgage market, with particular emphasis upon the special affordable segment.[63]

As noted previously, the GSEs incur relatively large fixed costs when underwriting and purchasing multifamily mortgage loans. As a result, there could be an incentive to purchase large multifamily mortgage loans to reduce the cost of the transactions per unit. Under this approach to the special affordable multifamily subgoal utilizing the number of mortgages acquired as the benchmark, the GSEs would have additional incentive to choose a large pool of small loans over a pool consisting of a few large loans.[64] This could facilitate liquidity in the market for mortgages on small multifamily properties where there continues to be unmet credit needs. Because multifamily mortgage purchases are an important source of affordable housing and contribute significantly to meeting the unit based housing goals, the GSEs also would be expected to continue to purchase mortgages secured by larger properties.

This approach also avoids the problem associated with the effects of inflation, discussed above, in regard to the proposed dollar-based subgoal. The magnitude of the goal is independent of the loan amount per unit.

However, while a mortgage-based approach to the subgoal may address the small multifamily rental property issue, it may not have the same impact in financing as many units overall as other approaches.

(4) *Comments Sought.* The Department seeks comment on whether the special affordable multifamily subgoal proposed that is based on a percentage of total dollar volume of mortgages purchased, or the possible alternative structures presented that base the subgoal on (a) the number of units financed, (b) a percent of current multifamily mortgage purchases, or (c) the number of mortgages acquired, are reasonable and desirable approaches to closing market gaps in the very low-and low-income rental market. HUD also solicits comment on the appropriate level for the subgoal as proposed, or under the various possible structures presented, and how the possible levels illustrated herein would likely impact multifamily acquisitions, especially for very low-and low-income multifamily units.

5. *Bonus Points and Subgoals.* Although the GSEs have been successful in meeting their housing goals, analyses of their housing goal performance and market needs indicate that certain credit gaps remain. For example, HUD's analysis reveals that the need for mortgage credit persists in specific markets that focus on lower-income families including small multifamily rental properties; single family, owner-occupied rental properties (2–4 units); manufactured housing; multifamily properties in need of rehabilitation; and properties in tribal areas. As a regulatory incentive to encourage the GSEs to increase their mortgage purchase activity in these underserved markets, the Department is proposing the use of bonus points in certain important segments of the housing market. HUD also seeks comments on the utility of applying similar regulatory incentives (bonus points and/or subgoals) to other underserved segments.

a. *Bonus Points.* Section 1336(a)(2) of FHEFSSA directs the Department to ''establish guidelines to measure the extent of compliance with the housing goals, which may assign full credit, partial credit, or no credit toward achievement of the housing goals to different categories of mortgage purchase activities of the enterprises, based on such criteria as the Department deems appropriate.'' This provision confers broad authority upon HUD to assign varying levels of credit to differing types of mortgage purchases. Under this and other authorities, HUD may offer bonus points for particular categories of mortgage purchase transactions.

The Department proposes to introduce a system of bonus points to encourage the GSEs to increase their activity in underserved markets that serve lower-income families. The intent of bonus points is to encourage increased involvement by the GSEs over the 2000–2003 period in financing mortgages on small multifamily properties and mortgages on 2–4 unit owner-occupied properties that contain rental units, for which the GSEs' mortgage purchases have traditionally played a minor role.

Bonus points would be used in calculating goal performance under each of the affordable housing goals but would not apply in determining performance under the special affordable housing multifamily subgoal. All units counting toward a specific housing goal and, thus, included in the numerator of the fraction used to calculate goal performance under that particular housing goal would be eligible for bonus points provided that the units met the specific criteria for allowable bonus points. This provision would apply to all units included in the numerator even if a unit were missing affordability data and the missing affordability data were treated consistent with the proposal included in the following section II,B,6,b, ''Data on Unit Affordability.''

(1) *Bonus Point Proposal for Small Multifamily Properties.* HUD proposes to add § 81.16(c)(10)(1) to provide for the assignment of double weight in the numerator for each of the three housing

[61] A similar pro-rating technique is specified for the special affordable multifamily subgoal in the 1995 Final Rule. See footnote 62.

[62] HUD has determined that the number of mortgage loans purchased by the GSEs in 1998 was as follows:

Fannie Mae: 3,226,786.

Freddie Mac: 2,439,194.

[63] If this option were selected, appropriate subgoal thresholds for the one-year transition period (2000) could be developed.

[64] For example, under this subgoal option, the purchase of a mortgage backed by a 10-unit property with $300,000 mortgage would receive the same subgoal credit as a 100-unit property with a $2.5 million mortgage (provided all units were eligible for the Special Affordable Housing Goal). If all the units in the property securing the mortgage are not eligible for the Special Affordable Housing Goal, then subgoal performance would be pro-rated based on the number of qualifying units, as discussed above.

goals for units in small multifamily properties (5 to 50 units) that qualify under the goals. The GSEs purchase relatively few of these loans. Over the 1996–98 period, only eight percent of the units represented in the combined multifamily purchases of Fannie Mae and Freddie Mac were in properties in the 5–50 unit size range, compared to 37 percent of units which are in 5–50 unit properties among all mortgaged multifamily properties in 1991 (based on the Residential Finance Survey). Loans of this type which are not purchased by the GSEs are often structured with adjustable-rate mortgages, or with fixed-rate financing involving interest rates that are as much as 150 basis points above those on standard multifamily loans. Targeting the GSEs toward these purchases could make these properties and the units in them more available and affordable.

Awarding bonus points for these units would have increased Fannie Mae's and Freddie Mac's performance on the Low- and Moderate-Income Housing Goal by an average of 0.89 and 0.33 percentage points, respectively, over the 1996–98 period. Corresponding percentage point effects for the Special Affordable Housing Goal are 0.55 and 0.21 percentage points, and for the Geographically Targeted Goal, 0.66 and 0.21 percentage points for Fannie Mae and Freddie Mac, respectively. The impacts could be significantly larger in future years if such a bonus point framework provided a significant incentive for the GSEs to step up their role in financing small multifamily properties.

(2) *Counting Units in Small Multifamily Properties.* Implementing this provision would require clear specification of the concept of a multifamily property relative to which the 5–50 unit limit for bonus points would be applied. The Department proposes to award bonus points for small multifamily properties to address the significant needs for their financing, both for properties that are underwritten and financed individually and for properties that are aggregated into larger financing packages. However, the Department further intends that bonus points will not be awarded for properties that are aggregated or disaggregated into 5–50 unit financing packages solely for the purpose of earning bonus points. Normally, a property is the land and improvements associated with one mortgage as defined in HUD's regulations. Ambiguity may arise in connection with GSE financings which are not cash or swap transactions involving mortgages. In such cases, or in other cases where a GSE believes that it would be appropriate to award bonus points in connection with a transaction, the GSEs should seek guidance from the Department concerning the delineation of properties associated with the financing and the consequent allowability of bonus points.

(3) *Bonus Points for Small Rental Properties.* HUD further proposes to add § 81.16(c)(10)(ii) to assign double weight in the numerator for each of the three housing goals for all units in 2- to 4-unit owner-occupied properties that qualify under the goals. Under this proposal, such units would receive bonus-point treatment to the extent that the number of such units financed by mortgage purchases are in excess of 60 percent of the average number of units qualifying for the respective housing goal during the immediately preceding five years. These loans represent a small portion of the GSEs' overall mortgage purchases although these units comprise a large percentage of the low-income housing stock. Use of bonus points in this category could provide incentives for the GSEs to increase their purchases in underserved areas.

The 60 percent threshold, if it were in effect for 1999 GSE mortgage purchases, would be set at the following levels:

	Fannie Mae (No. of units)	Freddie Mac (No. of units)
Low- and Moderate-Income Housing Goal ..	26,294	16,971
Geographically Targeted Goal	25,193	14,889
Special Affordable Housing Goal	12,720	8,564

The Department estimates that, if bonus points for small rental properties had been in effect during 1996–1998, Freddie Mac's goal percentages would have increased by 0.89 percentage point on the Low-and Moderate-Income Housing Goal, 0.67 percentage point on the Geographically Targeted Goal, and 0.47 percentage point on the Special Affordable Housing Goal, based on average purchase volumes over this three-year period. Fannie Mae's goal percentages would have increased by 0.91 percentage point on the Low and Moderate Income Housing Goal, 0.76 percentage point on the Geographically Targeted Goal, and 0.43 percentage point on the Special Affordable Housing Goal.

The purpose of bonus points is to encourage the GSEs to establish a larger and more consistent presence for the GSEs in targeted segments of the mortgage market. During the period that the goals under this proposal are effective, the Department will carefully monitor the effects of the bonus points approach in the housing categories in which they are being applied, to determine whether they are effective in incorporating the financing of properties targeted by the bonus points into the GSEs' mainstream activities. The Department does not plan to award bonus points to the GSEs after December 31, 2003, unless the Department specifically chooses to extend their availability in accordance with provisions of the rule.

b. *Subgoals.* Alternatively, HUD is considering using subgoals to encourage the GSEs to undertake activities to address the unmet credit needs of groups or areas and/or to support public policy initiatives that are consistent with the GSEs' public purposes. HUD may establish subgoals under any of the three housing goals although HUD may only enforce subgoals under the Special Affordable Housing Goal.[65] While FHEFSSA prohibits the enforcement of subgoals under the Low- and Moderate-Income Housing Goal or the Geographically Targeted Goal, the use of subgoals, whether or not they are enforceable, could encourage the GSEs to address unmet credit needs by directing the GSEs' and the public's attention on particular needs. For example, the special affordable housing multifamily subgoal has focused the GSEs' attention on special affordable multifamily activities.

In the 1995 rulemaking, HUD chose not to establish subgoals under either the Low- and Moderate-Income Housing Goal or the Geographically Targeted Goal, despite a number of comments urging the use of such tools. At that time, HUD expressed concern that the establishment of subgoals might be construed as micromanagement of the GSEs' business decisions at that relatively early post-FHEFSSA stage.[66] However, since issuance of the 1996 to 1999 housing goals, HUD has conducted extensive analyses of the GSEs' operations under the housing goals, as well as the size and components of the primary mortgage market. Based on this analysis, HUD can better identify areas of unmet credit needs. Inasmuch as Congress, in FHEFSSA, explicitly authorized HUD to create subgoals—although they would be largely

[65] Section 1332(a) of the FHEFSSA grants HUD authority to ''establish separate specific subgoals within the [Low- and Moderate-Income Housing] goal. * * *'' Section 1334(a) contains a similar provision for the Geographically Targeted Goal. Section 1333 allows HUD to establish subgoals under the Special Affordable Housing Goal that are enforceable.

[66] *See id.*

unenforceable—and in light of increased experience under the goals, HUD requests comments on the extent to which HUD should utilize subgoals.

c. *Areas Under Consideration for Bonus Points and/or Subgoals.* In addition to those areas described above, for which HUD proposes to award bonus points, HUD has identified several areas of unmet credit needs that could be addressed through the use of bonus points or subgoals, as appropriate. These areas are listed below, along with the possible rationale for taking such approach(es).

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Area of Concern	Rationale
Manufactured housing	Manufactured housing provides some of the most affordable owner-occupied housing for families targeted by HUD's housing goals. In fact, three-quarters of
Single family loans to categories of minorities which data indicates are underserved	Data indicates that certain categories of borrowers have lower home ownership rates than "served" borrowers and they
Single family and multifamily rehabilitation loans	Single family: More funds are needed for purchasing (or refinancing) homes in need of repairs. Multifamily: GSEs apply more stringent underwriting requirements for properties that are
Single family and multifamily loans in tribal areas	While Fannie Mae has participated in HUD's Section 184 program, which promotes affordable housing opportunities for Native Americans,
Single family and multifamily loans in Empowerment Zones/ Enterprise Communities (EZ/EC)	Potential borrowers in these distressed communities have a greater demand for products that allow flexible underwriting including consideration of non-traditional credit information.
Low-income borrowers and tenants in underserved portions of non-metropolitan areas	Studies show that certain parts of rural areas continue to be underserved by the secondary market.
Expiring Section 8 contracts.	The Mark-to-Market legislation provided that the GSEs should receive credit for actions that assist in maintaining the affordability of assisted units in eligible multifamily housing

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In addition to the specific rule changes proposed above, the Department invites comment on the following:

(1) Should HUD use either bonus points or subgoals to target mortgage purchases for one or more of the areas of concern identified above?

(2) Would one or more of these areas benefit more from bonus points or the establishment of subgoals and why? If bonus points are suggested, what amount of bonus points should be assigned, and why?

(3) Are there other areas not identified where bonus points and/or subgoals should be considered?

6. *Calculating Performance Under the Housing Goals.* In the current regulation, HUD set forth general requirements for counting the GSEs' performance under the housing goals in § 81.15, special counting requirements in § 81.16 (including specific exclusions from eligibility in § 81.16(b)), additional special requirements pertaining to counting under the Special Affordable Housing Goal in § 81.14, and rules for classifying families and units into income ranges in §§ 81.17–81.19. HUD's experience since the 1995 issuance of the current regulations indicates that several of these counting rules require clarification to ensure that they are understood and applied in a consistent manner and that the GSEs are achieving FHEFSSA's objectives. HUD invites comment on these clarifications and revisions described below.

a. *Temporary Adjustment Factor for Freddie Mac.* In response to widespread default losses, Freddie Mac ceased purchasing multifamily mortgages for a period of time in the early 1990s. However, Freddie Mac significantly expanded its presence in the multifamily mortgage market in the period since HUD's Interim Housing Goals took effect at the beginning of 1993, with purchases totaling $191 million that year. Freddie Mac's purchases reached $6.6 billion in 1998 and $3.4 billion in the first six months of 1999.

Despite this progress, Freddie Mac's presence in the multifamily market lags far behind that in single-family. Multifamily mortgages held in portfolio or guaranteed by Freddie Mac represented only 3 percent of the outstanding stock of such mortgages as of the end of the third quarter of 1998, compared with 16 percent of single-family mortgages. Corresponding figures for Fannie Mae are 11 percent in multifamily and 21 percent in single-family.[67]

Because of the importance of multifamily acquisitions to the GSE housing goals, the limited scope of Freddie Mac's multifamily acquisition volume has impaired its performance on HUD's housing goals. For example, while multifamily units accounted for only 8 percent of Freddie Mac's overall 1997 business, they accounted for 31 percent of units qualifying toward the Special Affordable Housing Goal, and 19 percent of the units qualifying for the Low- and Moderate-Income Goal. Thus, improved performance by Freddie Mac on the housing goals will require strengthening its efforts in the multifamily mortgage market.

To overcome any lingering effects of Freddie Mac's decision to leave the multifamily market in the early 1990s, it is reasonable for the Department to provide an incentive for Freddie Mac to further expand its scope of multifamily operations. The Department is proposing a ''Temporary Adjustment Factor'' for Freddie Mac's multifamily mortgage purchases for purposes of calculating performance on the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal. In determining Freddie Mac's performance for each of these two goals, each unit in a property with more than 50 units meeting one or both of these two housing goals would be counted as 1.2 units in calculating the numerator of the respective housing goal percentage. The Temporary Adjustment Factor would be limited to properties with more than 50 units because of separate provisions regarding multifamily properties with 5–50 units, discussed separately in Section II,B,5,a,(1).

The Temporary Adjustment Factor would terminate December 31, 2003. The Adjustment Factor would not be applied to the Geographically Targeted Goal. The Adjustment Factor would not apply to Fannie Mae.

The Department estimates that, if the Temporary Adjustment Factor were in effect during 1996–1998, it would have raised Freddie Mac's performance on the Low- and Moderate-Income Housing Goal by 1.52 percentage points and the Special Affordable Housing Goal by 0.86 percentage points.

HUD specifically requests comments on whether the proposed temporary adjustment factor for Freddie Mac is set at an appropriate level, and if such an adjustment factor should be phased out prior to 2003 or apply for the entire four year cycle.

b. *Data on Unit Affordability.* As indicated in § 81.15(a), each GSE must obtain all required information to determine whether units financed by the GSE purchased mortgages that qualify for one or more of the goals. If any of the information is missing, the GSEs must exclude the mortgage purchase from the numerator as not qualifying but they must include the mortgage in the denominator as a mortgage purchase in calculating performance under a housing goal.[68] The Senate Report on FHEFSSA noted the presence of an ''information vacuum'' with regard to the GSEs' mortgage purchases, indicating Congress' intention that the Department require accurate and comprehensive data regarding the GSEs' mortgage purchases for purpose of measuring compliance with the housing goals.[69] Therefore, the Department is committed to maintaining a complete and fully reliable loan level data base of the GSEs' mortgage purchases.

The GSEs have indicated that, for certain single family and multifamily mortgage purchases, it is difficult, and therefore costly, to obtain the necessary data on incomes and rents for all units associated with their mortgage purchases, especially for seasoned loan transactions and some negotiated transactions. The GSEs have requested the authority to use estimation techniques to approximate the unit rents in multifamily properties where current rental information is unavailable and to exclude units from the goal calculations where it is impossible to obtain full data or estimate values.

While providing the GSEs relief from the requirement to obtain rental data would remove an incentive to collect such information, the Department recognizes that the lack of such data in the mortgage market poses potentially insurmountable difficulties for the GSEs for a portion of their mortgage purchases. The Department, therefore, proposes the following measures for treatment of cases where a GSE does not obtain full data. The Department seeks comments on these proposals and welcomes suggestions for alternative ways of addressing the issue.

(1) *Multifamily Rental Units.* For purposes of counting rental units

[67] Source: *Federal Reserve Bulletin*, March 1999, p. A35. HUD estimates that, in 1997, Freddie Mac acquired mortgages representing approximately 7 percent of the conventional multifamily market, compared with 17 percent of the conventional, conforming single family market. Corresponding estimates for Fannie Mae are 21 percent of multifamily and 31 percent of single family.

[68] Purchases of mortgages originated prior to 1993 with missing data may be excluded from the denominator.

[69] See Sen. Rep. at 33.

toward achievement of the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, the current regulation requires that mortgage purchases financing eligible units be evaluated based on either the income of the tenant, or where this information is unknown, on the actual or average rent relative to area median income, as of the time the mortgage was acquired.[70] The GSEs generally use rental data in calculating goal achievement.

For units in multifamily properties (five or more units), the Department proposes to allow the use by a GSE of estimated rents based on market rental data. The Department will review and approve the GSEs' data sources and methodologies for estimating rents on multifamily units prior to their use, to assure reliability. Rental data submitted to the Department based on an estimation shall be so identified by the GSE. HUD requests comments on whether it should establish a percentage ceiling for the GSEs' use of estimated data for multifamily mortgage purchases.

The Department further proposes to exclude units in multifamily properties from the denominator as well as the numerator in calculating performance under the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal when sufficient information is not available to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the goal, and when the application of estimated rents based on an approved market rental data source and methodology is not possible. HUD requests comments on whether it should establish a percentage ceiling for the exclusion of multifamily units with missing data from the denominator for goal calculation purposes when estimated rents are not available. Because a relatively large portion of multifamily units count toward the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, an incentive for the GSEs to provide affordability data would remain in place even if such data were excluded from the denominator without limitation.

(2) *Single Family Rental Units.* For purposes of counting rental units in 1–4 unit single family properties toward achievement of the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, the Department proposes to exclude the rental units in 1–4 unit properties from the denominator as well as the numerator in calculating performance under the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal when sufficient information is not available to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the Low- and Moderate Income Housing Goal or the Special Affordable Housing Goal. HUD requests comments on whether it should establish a percentage ceiling for the exclusion of single family rental units with missing data from the denominator for goal calculation purposes when estimated rents are not available. Because a relatively large proportion of rental units in 1–4 unit single family properties count toward the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, an incentive for the GSEs to provide affordability data would remain in place even if such data were excluded from the denominator without limitation.

(3) *Single Family Owner-Occupied Units.* For purposes of counting single family owner-occupied units toward achievement of the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, the current regulation requires that mortgage purchases financing eligible owner units be evaluated based on the income of the owner relative to area median income, as of the time the mortgage was originated.[71]

The Department proposes to allow a GSE to exclude certain single family owner-occupied units from the denominator as well as the numerator in calculating performance under the Low- and Moderate-Income Housing Goal when the GSE lacks sufficient information on borrower income to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the goal, provided the mortgaged property is located in a census tract with median income less than or equal to area median income according to the most recent census. Such exclusion from the denominator and numerator will be permitted up to a ceiling of one percent (1%) of the total number of single family, owner-occupied dwelling units eligible to be counted toward the respective housing goal in the current year. Mortgage purchases in excess of the ceiling will be included in the denominator and excluded from the numerator.

HUD's analysis of GSE loan-level data indicates that the share of single-family owner-occupied units qualifying for the Low- and Moderate Income Housing Goal and the Special Affordable Housing Goal is significantly higher in tracts with median income less than or equal to area median income (''low-mod tracts'') than in other tracts, and is in fact higher than the GSEs'' overall goals performance across all property types. Consequently, excluding such units from the numerator and denominator in cases where income data are missing is unlikely to result in measured goals performance exceeding actual goals performance.

c. *Seasoned Mortgage Loan Purchases ''Recycling'' Requirement.* Under section 1333(b)(1)(B) of FHEFSSA, special rules apply for counting purchases of portfolios of seasoned mortgages under the Special Affordable Housing Goal. Specifically, the statute requires that purchases of seasoned mortgage portfolios receive full credit toward the achievement of the Special Affordable Housing Goal if ''(i) the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet such goal; and (ii) such purchases or refinancings support additional lending for housing that otherwise qualifies under such goal to be considered for purposes of such goal.'' [72] HUD refers to this provision as the ''recycling requirement.''

Section 81.14(e)(4)(i) of HUD's regulations clarify the meaning of the phrase ''engaged in a specific program to use the proceeds of such sales to originate additional loans that meet'' the Special Affordable Housing Goal by providing that:

> [A] seller must currently operate on its own or actively participate in an ongoing program that will result in originating additional loans that meet the goal. Actively participating in such a program includes actively participating with a qualified housing group that operates a program resulting in the origination of loans that meet the requirements of the goal.

Section 81.14(e)(4)(ii) provides that the GSEs must verify and monitor that the seller is engaging in a specific program to use the proceeds of such sales to originate additional loans that meet the Special Affordable Housing Goal.

Based on a review of the GSEs' performance under the Special Affordable Housing Goal, the Department believes further guidance is needed with regard to the recycling requirements described above to ensure that mortgage purchases granted full credit under this provision satisfy the purposes of FHEFSSA and, at the same

[70] 24 CFR 81.15(e). Rental information may be presented for type-of-unit categories identified by number of bedrooms and average rent level.

[71] 24 CFR 81.15(d).

[72] 12 U.S.C. 4563(b)(1)(B).

time, to ensure that the rules are applied so as to avoid any unnecessary regulatory burden. The Department, therefore, proposes to amend its regulations to further explain the requirements for the GSEs to receive full credit under these provisions and to establish new, simpler rules when it is evident based on the characteristics of a mortgage seller, including the seller's legal responsibilities, that the recycling requirements are met. The new rules would provide that for a mortgage purchase to meet the recycling requirements:

(1) The seller must currently operate on its own or actively participate in an on-going, discernible, active, and verifiable program directly targeted at the origination of new mortgage loans that qualify under the Special Affordable Housing Goal.

(2) The seller's activities must evidence a current intention or plan to reinvest the proceeds of the sale into mortgages qualifying under the Special Affordable Housing Goal, with a current commitment of resources on the part of the seller to this purpose.

(3) The seller's actions must evidence willingness to buy qualifying loans when these loans become available in the market as part of active, on-going, sustainable efforts to ensure that additional loans that meet the goal are originated. Actively participating in such a program includes purchasing qualifying loans from a correspondent originator, including a lender or qualified housing group, that operates an on-going program resulting in the origination of loans that meet the requirements of the goal, has a history of delivering, and currently delivers, qualifying loans to the seller.

Under this proposed rule, as under the current requirements, the GSEs must ordinarily verify and monitor that sellers meet the foregoing requirements and develop any necessary mechanisms to ensure compliance with these requirements. However, HUD does not believe that the efforts of the GSEs are well spent on monitoring compliance when, because of the nature and responsibilities of particular sellers, it is clear that the seller meets the recycling requirements. For this reason, the rule proposes that an institution that is (1) regularly in the business of mortgage lending; (2) a BIF-insured or SAIF-insured depository institution; and (3) subject to, and has received at least a satisfactory performance evaluation rating for at least the two most recent consecutive examinations under, the Community Reinvestment Act,[73] (which requires affordable lending), would meet the recycling requirements. The nature of such an institution's business and regulatory responsibilities require it to engage in a program that satisfies the recycling provisions. This rule, therefore, proposes that HUD and the GSEs may presume that such institutions, classified by the appropriate ''Type of Seller Institution'' data element, meet the recycling requirements.

Moreover, in the interest of further reducing unnecessary regulatory burden, HUD believes that there are certain additional classes of institutions or organizations that should be recognized as meeting the recycling requirements. For example, classes of institutions whose primary businesses are financing affordable housing mortgages, including possibly State Housing Finance Agencies or Special Affordable Housing Loan Consortia. For such classes of institutions or organizations, HUD is proposing that the GSEs may presume that they meet the recycling requirements. Classes of institutions or organizations must be approved by the Department and be appropriately identified in the GSEs' data submissions. Commenters are invited to provide their views on how to identify and define such classes of organizations or institutions.

In addition to specific changes proposed, commenters are invited to share their views as to whether any additional exemptions or changes to this provision should be established under the recycling provisions that would further its purpose. Comments are also specifically invited on (1) what, if any, provisions should be included in the proposed rule to address the various affiliate structures of depository institutions; and (2) the treatment under the recycling provisions of structured transactions where the mortgage loans included in the transaction were originated by a depository institution or mortgage banker engaged in mortgage lending on special affordable housing but acquired, packaged and re-sold by a third party, *e.g.,* an investment banking firm, that is not in the business of affordable housing lending.

An additional matter concerns the appropriate interpretation of § 81.16(c)(6) for counting seasoned mortgages. During the last four years, both GSEs have asserted that HUD's regulations permit the exclusion of purchases of seasoned mortgages from the denominator as well as from the numerator when the recycling requirements have not been met or when the status of loans with respect to this provision is unknown.

The GSEs believe that the regulation should be interpreted to mean that purchases of seasoned loans should not count in the denominator in calculating Special Affordable Housing Goal performance if the recycling requirements of section 1333(b)(1)(B) are not satisfied. The GSEs maintain that this provision defines whether such loans are ''mortgage purchases'' and thus, whether they are to be included in the denominator. As a result of this interpretation, Fannie Mae chooses not to undertake the verification and monitoring required to track compliance with the recycling provision and excludes the purchases from the denominator based on its lack of information. Freddie Mac chooses a similar treatment for those seasoned loans it does not count toward its Special Affordable Housing Goal performance.

In calculating its 1996 and 1997 performance under the Special Affordable Housing Goal, Fannie Mae excluded all seasoned loan purchases from both the numerator and the denominator for purposes of reporting its goals performance to HUD. The effect of this action was to reduce the denominator by 212,290 units in 1996 and 197,074 units in 1997, with the result that Fannie Mae considered its goal figures to be two percentage points higher than HUD's determination in 1996 and 2.15 percentage points higher in 1997. Freddie Mac counted most of its seasoned loan purchases towards the Special Affordable Housing Goal and, thus, there was only a marginal impact on its goal performance.

The Department has consistently maintained that the GSEs are required to count all mortgage purchases in the denominator. HUD's rules only permit the GSEs to exclude mortgages from the denominator under explicit circumstances. See §§ 81.15(a) and 81.16(b). As we have stated, the legislative history of FHEFSSA emphasizes the importance of accurate and comprehensive data.[74] On the other hand, experience indicates that incentives for the GSEs to gather accurate and comprehensive data may encourage the GSEs, in some instances, to avoid certain purchases altogether in order to keep such purchases out of their denominator, notwithstanding that such purchases may meet the other goals. Accordingly, while HUD has in the past disagreed with the GSEs' interpretation of its current rules, the Department is now proposing to consider the possibility of limited exceptions to the general rule where it

[73] 12 U.S.C. 2901 *et seq.*

[74] See Sen. Rep. at 33.

would be beneficial for the GSEs to purchase certain mortgages that simply will not meet recycling requirements, without having their goals performance effectively reduced by including the purchases in the denominator. An example would be a GSE's purchase of low- or moderate-income loans from a mortgage seller that enters and then leaves the affordable lending business. Such an entity may not meet the recycling requirements as a statutory matter because the seller would no longer be ''engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the goal.'' [75] However, a GSE's willingness to purchase such mortgages may cause other originators to embark on affordable lending secure that the GSE will provide a secondary market for these loans.

To encourage affordable lending, this rule proposes to permit the Department in certain cases or classes of cases to allow the GSEs to exclude mortgages from the numerator and the denominator under the Special Affordable Housing Goal when the Department determines that such treatment serves to encourage the GSEs' mortgage purchases to further the purposes of the goal. To implement this change, HUD proposes to revise the language in § 81.16(c)(6) so that the Department may permit the exclusion of cases or classes of cases of purchases of seasoned mortgage loans from the numerator and the denominator in a GSE's calculations of performance under the Special Affordable Housing Goal when the Department determines such purchases further the purposes of the goal. The rule proposes that the GSE may request such treatment in writing and that the Department will respond to such request following the Department's determination. Commenters are specifically asked for their views regarding whether the Department should adopt this exclusion and, if so, what, if any, limits should be placed on it. To implement this change, HUD proposes to revise the language in § 81.16(c)(6) so that the Department may permit the exclusion of cases or classes of cases of purchases of seasoned loans from the numerator and the denominator in a GSE's calculations of performance under the Special Affordable Housing Goal when the Department determines such purchases further the purposes of the goal. The rule proposes that the GSE may request such treatment in writing and the Department will respond to such request following the Department's determination. Commenters are specifically asked for their views regarding whether the Department should adopt this exclusion and, if so, what, if any, limits should be placed on it.

d. *Counting Federally Insured Mortgages Including HECMs, Mortgages on Housing in Tribal Areas and Mortgages Guaranteed by the Rural Housing Service Under the Housing Goals.* Under HUD's current rules, non-conventional mortgages—mortgages that are guaranteed, insured or otherwise obligations of the United States—do not generally count under the three housing goals. (§ 81.16(b)(3)) Certain of these mortgages—including under the Home Equity Conversion Mortgage (HECM) Program, 12 U.S.C. 1715z–20, and the Farmers Home Administration's (now the Rural Housing Service's [RHS's]) Housing Loan Program—do, however, count under the Special Affordable Housing Goal. FHEFSSA specifically provides that mortgages that cannot be readily securitized through GNMA or another Federal agency and where a GSE's participation substantially enhances the affordability by statute receive full credit under the Special Affordable Housing Goal. On this basis, these two categories of mortgages count under that goal if they are for very low-income families or low-income families in low-income areas.

HECMs provide an important source of funds for senior citizens, especially those with lower incomes, who have paid off most or all of the mortgages on their homes and who wish to draw on the equity in their home to pay unanticipated expenses or to maintain a higher standard of living than they could support from their current income alone. Under HUD's HECM program they can do this without selling or risking the loss of their home. Fannie Mae has played a major role in the secondary market for HECMs, purchasing 5800 such loans in 1997 and 6700 such loans in 1998. Freddie Mac has not been involved in this program to date; inclusion of these loans for possible credit under all three of the housing goals will provide an incentive for them to play a role in the HECM market.

RHS loans are especially important to cash-strapped families in rural areas, since loan-to-value ratios can be as high as 100 percent. And the RHS's new Section 502 Direct Loan program is targeted to low-income and especially low-income families. Both GSEs have been involved in this market, with Fannie Mae purchasing 1600 such loans in 1997 and 2100 such loans in 1998, and Freddie Mac sharply stepping up its presence from 1400 such loans in 1997 to 3300 such loans in 1998. The GSEs also assist the RHS in outreach through the development of promotional and advertising materials.

One other area the Department is considering counting for goal credit are loans made to Native Americans under FHA's Section 248 program and HUD's Section 184 program. The paucity of home mortgage lending on American Indian reservations and trust lands has been well documented. Secretary Cuomo, in his remarks accompanying President Clinton to the Pine Ridge Indian Reservation in South Dakota, recently commented that ''The descendants of the first Americans shouldn't be locked out of the American Dream of homeownership.'' Allowing goal credit for FHA's Section 248 loans and HUD's Section 184 loans on reservations and trust lands will provide some support for these programs, though much greater efforts will be needed to make this dream of homeownership a reality.

Nonetheless, based upon its review of data on the GSEs mortgage purchases, HUD has concluded that HECMs, RHS mortgages and loans made to Native Americans under FHA's Section 248 program and HUD's Section 184 program comprise very small shares of the GSEs' business. At the same time, the properties secured by these mortgages present substantial and growing financing needs. Accordingly, while HUD maintains that non-conventional mortgages should be excluded under the goals where financing needs are already met by government programs, the Department also believes that non-conventional loans may count where financing needs are not well served. In such cases the goals will serve to direct the GSEs toward these needs. Accordingly, HUD proposes to amend its rules at § 81.16(b)(3) to except mortgages under the HECM program, mortgages guaranteed by RHS, and loans made under FHA's Section 248 program and HUD's Section 184 program on properties in tribal lands from the general exclusion under the rules for non-conventional loans. In addition, the rule allows the Department to count mortgage purchases under other non-conventional mortgage program(s) to count under the goals where the Department determines, in writing, that the financing needs addressed by such program are not well served and that mortgage purchases under such program should count. The proposed rule provides that where non-conventional mortgage purchases will now count toward the goal, they no longer will be

[75] 12 U.S.C. 4563(b)(1)(B).

excluded from the denominator of the GSEs' mortgage purchases as are other non-conventional loans.

e. *Counting Title I Loans.* During the transition period, from 1993 to 1995, HUD explicitly provided that home improvement and manufactured home loans for which lenders are insured under HUD's Title I program received half credit toward all three housing goals for which they qualified.[76] Following the transition period, HUD's 1995 final rule provided that, in accordance with section 1333(b)(1)(A) FHEFSSA, GSE purchases of non-conventional mortgages do not count toward the housing goals.[77] The exception to the rule is that Federally-related mortgages may receive full credit toward the Special Affordable Housing Goal if the mortgages would otherwise qualify for the goal, the Government National Mortgage Association (Ginnie Mae) cannot readily securitize them, and participation by the GSE substantially enhances their affordability.[78]

In a pilot program initiated between July 1996 and July 1997, Ginnie Mae was not successful in securitizing Title I loans. Moreover, while HUD has not analyzed whether GSE participation in these loans enhances their affordability, the pricing efficiencies that result from the securitization of mortgages suggest that an affordability analysis would be favorable.

Under the circumstances, HUD is proposing to amend § 81.14 to explicitly allow the GSEs to receive half credit for Title I loans under the Special Affordable Housing Goal. Units financed with Title I loans would be included at 100 percent (each unit counts as such) in the Special Affordable Housing Goal denominator, and included at 50 percent (each unit counts as such) in the Special Affordable Housing Goal numerator when they otherwise qualify for that goal. However, units financed with Title I loans would be excluded from the numerator and denominator in both the Low- and Moderate-Income Housing Goal and the Geographically Targeted Goal.[79]

f. *Defining the Denominator.* Section 81.15(a) of the 1995 final rule defines the denominator as ''the number of dwelling units that could count toward achievement of the goal under appropriate circumstances.'' HUD proposes to clarify this provision further by adding language to § 81.15 that specifically provides that the denominator shall not include GSE transactions or activities that are not mortgages or that are mortgage purchases or transactions which are specifically excluded as ineligible under § 81.16(b) of the regulations.

g. *Balloon Mortgages.* Single family mortgage refinances that result from the conversion of balloon notes to fully amortizing notes shall not count as mortgage purchases where the GSE already owns or has an interest in the balloon note at the time the conversion occurs and the GSE owns or has an interest in the fully amortizing note. Such conversions shall not be treated as a refinancing and shall not be counted in the numerator or denominator in calculating goal performance. Refinancings of balloon mortgages not owned by the GSE will be included in the denominator and numerator as appropriate. To implement this change to the special counting requirements, HUD proposes to revise the definition of ''Refinancing'' in § 81.2 to specifically exclude the conversion of balloon mortgages on single family properties and to add this provision to the special counting requirements in § 81.16.

h. *Expiring Assistance Contracts.* Section 517(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997[80] (the 1997 Act) provides that actions taken to assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring Section 8 contracts ''shall constitute part of the contribution of each [GSE] in meeting its affordable housing goals * * *, as determined by the Secretary.'' The Department is proposing to add a provision to § 81.16 that provides partial or full credit for such actions. ''Actions'' under the 1997 Act relevant to the GSEs would include the restructuring or refinancing of mortgages, and credit enhancements or risk-sharing arrangements to modified or refinanced mortgages. Comments are invited on how and to what extent the GSEs should receive credit for such actions.

i. Especially Low Income. In accordance with section 1333 of FHEFSSA, § 81.14(d)(1)(i) currently provides that dwelling units in a multifamily property will count toward the Special Affordable Housing Goal if 20 percent of the units are affordable to families whose incomes do not exceed 50 percent of the area median income. Sections 81.17 through 81.19 provide that the income requirements are to be adjusted based on family size, and provide such adjustments for moderate-income families (income not in excess of 100 percent of area median income), low-income families (income not in excess of 80 percent of area median income), and very low-income families (income not in excess of 60 percent of area median income); but there is no similar adjustment table provided for families whose incomes do not exceed 50 percent of area median income. While such adjustments could be extrapolated from the adjustment tables provided in §§ 81.17 through 81.19, in order to assist the public, this rule proposes to amend these sections to provide additional adjustment tables for such families. In the interests of consistency, this rule also proposes to designate such families as ''especially low-income families'' for purposes of the Department''s GSE regulations. Section 81.14 of the proposed rule is amended to make such a designation.

j. Provision for HUD to Review New Activities to Determine Appropriate Counting Under the Housing Goals. While the GSEs participate in transactions and activities that support community and housing development in general, FHEFSSA is clear that only ''mortgage purchases'' count toward performance on the housing goals.[81] HUD's regulations provide that HUD will determine whether a transaction or activity is a ''mortgage purchase'' and will therefore count toward one or more of the goals for which it qualifies. Section 81.16 of the current regulations provides that in determining whether a GSE will receive full credit toward one or more of the goals for a transaction or activity, the Department will consider whether the transaction or activity ''is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market.''

As provided in § 81.16(b), HUD has determined that certain transactions do not meet those criteria and therefore will not count toward a GSE's performance toward the housing goals (*e.g.,* equity investments in housing development projects; commitments, options, or rights of first refusal to acquire mortgages; state and local government housing bonds; and non-conventional mortgages, except under certain circumstances); such purchases are not included in the numerator or the denominator. HUD has also provided guidelines in the regulations for the treatment of other types of transactions, such as credit enhancements, real estate mortgage investment conduits

[76] Fannie Mae continued to count half credit for Title 1 purchases during 1996 through 1998.

[77] Section 81.16(b)(3).

[78] Section 81.14(e)(2).

[79] 12 U.S.C. 4563(b)(1)(A)(ii).

[80] Title V of HUD's 1998 Appropriations Act, Pub. L. 105–65, approved October 27, 1997.

[81] See Sen. Rep. at 38.

(REMICs), risk-sharing arrangements, participations, cooperative housing and condominiums, seasoned mortgages, refinanced mortgages, and mortgage revenue bonds.

In meeting the goal levels proposed here the GSEs will need to continue to develop products and approaches to close the gap between their performance and that of the primary mortgage market. In doing so, however, HUD and the GSEs must be mindful of FHEFSSA's requirements. Since only mortgage purchases count under the goals, this rule proposes new requirements to ensure timely guidance to the GSEs regarding new approaches or new types of transactions. Under the proposed revisions, in order to eliminate confusion about whether a given transaction will receive credit under the housing goals, the GSEs may provide information about specific transactions to the Department for evaluation and a determination of whether the transaction will receive full, partial, or no credit. The Department may also continue to independently request information of the GSEs about certain types of mortgage transactions. The Department will review the transactions to ensure that the counting of such transactions under the housing goals is consistent with FHEFSSA and advise the GSEs of the Department's determination with regard to credit for purposes of counting such transactions under the housing goals. This proposed rule amends § 81.16 to further clarify this point.

k. *Credit Enhancements.* The GSEs utilize a large variety of credit enhancements, for both single family and multifamily mortgage purchases, to reduce the credit risk to which they might otherwise be exposed. For example, the GSEs generally require the use of mortgage insurance on single-family loans with loan-to-value ratios exceeding 80 percent. While more common in the multifamily mortgage market, seller-provided credit enhancements may also be required for GSE purchases of single family mortgage loans when mortgage insurance is not carried on individual mortgage loans. Other types of credit enhancements include:

(1) Credit enhancements in structured transactions where a GSE may acquire a pool of loans, mortgage-backed securities (MBS), or real estate mortgage investment conduits (REMICs), and then create separate senior and subordinated securities, structured so that the subordinated securities absorb credit losses. The senior securities are guaranteed by the GSE; the subordinated securities are not.

(2) Spread accounts, in which a GSE may create a special class of unguaranteed securities where pass-through payments will cease in the event of default of the underlying mortgage collateral. Proceeds from the sale of such securities provide a degree of protection against credit losses. Such transactions differ from structured transactions in that no senior securities are explicitly created. Freddie Mac's 1998 ''MODERNs'' transactions are an example.[82]

(3) Acquisition of senior tranches of REMIC securities. In these transactions, the GSEs acquire senior tranches of REMICs which are enhanced by the presence of subordinate tranches. These senior tranches typically receive an investment-grade rating from one of the major rating agencies. A difference between this type of transaction and the structured transactions described above is that when the GSEs purchase a senior tranche, the collateral is already credit-enhanced prior to purchase.

(4) Agency pool insurance. A GSE reduces its exposure if insurance is provided by a mortgage seller on a pool of single family mortgage loans which may also individually carry mortgage insurance.

In its recent report titled ''HUD's Implementation of Its Mission Oversight Needs to Be Strengthened,'' dated July 28, 1998, GAO reviewed the effectiveness of HUD's regulation of the GSEs. As part of that report, GAO commented on the Department's treatment of credit enhancements under the current rule. GAO noted that by allocating full credit toward the housing goals on multifamily mortgages with seller provided credit enhancements, through which the seller of mortgages retains some of the credit risk on mortgages, HUD may be providing a ''regulatory incentive'' for the GSEs to utilize such enhancements.[83] These credit enhancements typically take the form of recourse to the seller or loss-sharing agreements between the seller and the GSE purchasing the mortgage.

The GAO commented further that HUD's treatment of mortgage purchases involving credit enhancements under the housing goals appears inconsistent with HUD's treatment of mortgages acquired by the GSEs under a risk-sharing program with FHA. Under § 81.16(c)(3) of the regulation, the GSEs receive housing goal credit for mortgage purchases under a risk-sharing arrangement only where the GSEs bear at least 50 percent of the credit risk. GAO noted that no similar requirement pertains to mortgages for which sellers provide credit enhancements, even, hypothetically, where a seller would bear 100 percent of the credit risk.

HUD responded that GSE credit enhancement transactions provide liquidity. Moreover, seller provided credit enhancements differ from the FHA risk-sharing program in that seller provided credit enhancements include an element of counterparty risk; in the sense that, in the event of default, some sellers lack the financial resources to fulfill their commitment to repurchase a loan or otherwise share in default losses.

In considering the treatment of credit enhancements, HUD invites comments on the following questions:

(i) Given the wide range of institutional arrangements pertaining to credit enhancements and the interrelationships between credit enhancements and other considerations such as loan-to-value ratio and guarantee fee, how might the credit risk to which the GSEs are exposed be measured under various types of credit enhancement scenarios?

(ii) Assuming credit risk can be adequately measured, should HUD give partial credit under the housing goals when credit enhancements result in a substantial portion of the credit risk of the transaction being borne by the seller or a third party? For example, if the GSE bears less than 50 percent of the credit risk of a transaction should the GSE receive no credit toward housing goal performance? If the GSEs assume between 50 percent and 75 percent of the credit risk of a transaction, should the GSE receive 50 percent credit for housing goal purposes?

(iii) What would be the advantages and disadvantages of linking the amount of goals credit on a GSE mortgage purchase to the degree of associated credit risk? What are the possible effects on low-and moderate-income families and on underserved areas of the GSEs' use of various credit enhancements and how might they be affected if goals credit were linked to the degree of associated credit risk? Would there be potential effects on liquidity or other mortgage market factors?

(iv) Assuming credit risk can be adequately measured, should HUD establish a minimum percentage in the range of 0 to 100 percent for the amount of credit risk borne by the GSEs on their

[82] ''MODERN'' is an acronym for Mortgage Default Recourse Notes. See ''Freddie Mac Trying Hand at One of Fastest Growing Practices in Mortgage Business: Captive Reinsurance,'' *Inside Mortgage Finance*, June 26, 1998, pp. 3; ''New Details on Freddie Mac's Novel MODERNS Transactions Emerge: 27% Coverage on All Defaults,'' *Inside MBS & ABS*, June 19, 1998.

[83] HUD's Implementation of Its Mission Oversight Needs to Be Strengthened, page 29 (GAO/GGD–98–173, July 28, 1998).

mortgage purchases in order for such purchases to count toward the housing goals?

(v) If HUD establishes a minimum threshold for credit risk, should it be the same for multifamily and single family purchases, or should it be different for each? At what level should the threshold(s) be established? Should HUD establish the same threshold for all types of credit enhancements, or should this differ between types of credit enhancements? At what level should the threshold(s) be established?

(vi) Should HUD measure counterparty risk on seller-provided credit enhancements? If so, how?

(vii) Should HUD evaluate GSE performance in relation to the use of credit enhancements by calculating and comparing the risk-adjusted rate of return under the use of various credit enhancement alternatives?

1. *High Cost Mortgage Loans.* There is ample evidence that high cost mortgage lending and abusive lending practices increase defaults, have destabilizing effects on neighborhoods, and adversely affect homeownership. High cost mortgage loans characterized by high interest rates and front-end fees are often coupled with requirements for balloon payments, negative amortization, prepayment penalties, and lump sum credit life insurance. Loans with these features sometimes are characterized as ''predatory; while they may prove profitable to some originators, they quickly erode home equity for unwary borrowers. Evidence suggests that high cost loans are often the product of ''reverse redlining;'' these loans tend to target low-income communities and elderly, minority, and immigrant borrowers who have traditionally been denied access to mainstream sources of credit.

In 1994, Congress addressed many abuses in the primary market with the Home Ownership and Equity Protection Act (HOEPA), which provides special disclosures and protections for borrowers of certain high cost refinance mortgages. (15 U.S.C. 1639) To be subject to HOEPA's requirements, mortgage loans covered under the law must have: (1) An annual percentage rate at least 10 points higher than the yield on Treasury securities with comparable maturity to the transaction; or (2) total points and fees payable by the consumer in excess of the greater of either $451 (an amount established annually under the law by the Federal Reserve) or eight percent of the amount loaned. (15 U.S.C. 1602(aa)) Purchasers of these loans, including the GSEs, assume certain legal responsibilities under the Truth in Lending Act (''assignee liability'').

Given the concerns about the adverse effects of high cost loans and abusive lending practices on neighborhoods and homeownership, the Department invites comments on whether this rule should disallow goals credit for high cost mortgage loans. The Department also seeks comments on the following: (1) If goals credit is restricted for such loans should the HOEPA definition be used, or should an alternative definition be established for purposes of this rule? (2) What are the potential benefits, if any, associated with the GSEs' presence in various higher cost mortgage markets including mortgages with annual percentage rates between those of the prime market and the market for high cost mortgage loans (for example, standardization of underwriting guidelines and reductions in interest rates)? (3) What are the potential dangers, if any associated with the GSEs' presence in various higher cost mortgage markets?

The presence of the GSEs in the higher cost mortgage markets would seem to warrant increased monitoring and additional reporting by the GSEs to HUD. The Department seeks comments on what additional data would be useful and whether certain of these elements should be included in the public use data base. Possible data elements that could be collected for Department monitoring purposes include loan level data on the annual percentage rate, debt-to-income ratio, points and fees, and prepayment penalties.

C. Subpart F—Access to Information

This subpart discusses proposed modifications to the Department's Final Order of October 1, 1996,[84] ''*Proprietary Data Submitted by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)*'' (the Final Order), under sections 1323 and 1326 of FHEFSSA. In the Final Order, HUD determined that certain mortgage data that HUD requires the GSEs to submit is proprietary and not to be included in the public use data base. Upon reviewing the previous order published as Appendix F of the 1995 Final Rule,[85] the Final Order finalized existing and identified additional GSE loan-level data elements for single family and multifamily mortgages that HUD determined were proprietary and, therefore, withheld from the public. The Final Order also identified certain data elements that HUD would recode, adjust, or categorize in ranges to protect against the release of proprietary information, as necessary. After careful review of the previous proprietary orders, the Department is proposing a number of changes to the classification of certain GSE single family and multifamily mortgage data elements. The list of data elements that HUD proposes to make available to the public is described in the following sections. Appendix E of this proposed rule also contains full matrices, similar to those found in proprietary orders, that incorporate the changes proposed in this rule. Release of these data elements to public access is consistent with Congress's intent that ''every effort should be made to provide public disclosure of the information required to be collected and/or reported to the regulator, consistent with the exemption for proprietary data.'' [86]

1. *Background on Public Use Data Base and Public Information.* Section 1323 of FHEFSSA requires that HUD make available to the public, data relating to the GSEs' mortgage purchases. In the legislative history of FHEFSSA, Congress indicated its intent that the GSE public use data base supplement the HMDA data.[87] The purpose of the data base is to assist mortgage lenders, planners, researchers, and housing industry groups, as well as HUD and other government agencies, in studying the flow of mortgage credit and capital into the nation's communities. At the same time, Section 1326 protects from public access and disclosure, proprietary data and information that the GSEs submit to the Department and requires HUD to protect such data or information by Order or regulation.

To comply with FHEFSSA, HUD established a public use data base to collect and make available to the public, loan-level data on the GSEs' single family and multifamily mortgage purchases. In Appendix F to the December 1, 1995 final rule, the Department specified the structure of the GSE public use data base and identified the data to be withheld from public use. The single family data was to be disclosed in three separate files—a Census Tract File (with geographic identifiers down to the census tract level), a National File A (with mortgage-level data on owner-occupied 1-unit properties), and a National File B (with unit-level data on all single-family properties). The national files do not

[84] Notice of the Order was published in the **Federal Register** on October 17, 1996 (61 FR 54322).

[85] 60 FR 62001.

[86] Senate Report 102–282, 102d Cong., 2d Sess. 40 (19992).

[87] *See, e.g.,* Rep. at 39.

have geographic indicators. The multifamily data was to be disclosed in two separate files—a Census Tract File and a National File consisting of two parts—one part containing mortgage loan level data and the other containing unit level data for all multifamily properties. For each file, the appendix identified data elements that were considered proprietary and those that were not proprietary and available to the public, and specified further that certain proprietary elements would be recoded or categorized into ranges to protect the proprietary information and to permit the release of non-proprietary information to the public. This multi-file structure was designed at that time to allow the greatest dissemination of loan-level data, without revealing information that would allow competitors to determine the GSEs' marketing and pricing strategies at the local level.

On October 17, 1996, the Final Order describing each data element submitted by the GSEs and the proprietary nature of each element was published in the **Federal Register**. The Final Order also recoded, adjusted, or categorized in ranges certain proprietary loan-level data elements to protect the proprietary nature of the GSE information. HUD released the recoded data elements and the data elements that were identified as non-proprietary information to the public.

In the fall of 1996, the Department released the first GSE public-use data base that contained non-proprietary information on every mortgage purchased by the GSEs from 1993 to 1995. Subsequently, HUD made the 1996 and 1997 databases available to the public.

2. *Changes Proposed in This Rule.* After consideration of the current structure of the public use data base, the Department is proposing several changes to its classifications of the GSEs' mortgage data. These changes are either technical in nature or would make available to the public the same data from the GSEs that is made available by primary lenders under HMDA. These changes, therefore, would not appear to release proprietary information and would, at the same time, affirm Congress's intent that the HMDA data base and the GSE data base complement each other.

a. GSE Single Family Mortgage Data

(1) The Department proposes to change the MSA Code (Field #4) from YES (proprietary) to YES but Recode and to make the recoded data publicly available in National File A and National File B. The Department proposes to recode this data as:

1=Metropolitan
2=Non-Metropolitan
9=Missing

This change will make possible analyses at the national level by researchers beyond HUD of a variety of issues relating to metropolitan and non-metropolitan mortgage lending and GSE activities and will facilitate comparison between the GSE and HMDA data bases. Individual MSAs will not be identified.

(2) The Department proposes to code the Borrower's Annual Income (Field #15) to ''99999999'' when missing. This change will permit the coding of larger borrower incomes.

(3) The Department proposes to change the Purpose of Loan (Field #22) from YES (proprietary) to NO (non-proprietary) and to make such data publicly available in the Census Tract File and National File A. The Department also proposes to add the following values:

4=Rehabilitation
9=Not Applicable/Not Available

These changes will make possible separate analyses by researchers beyond HUD of home purchase, refinance, second, and rehabilitation mortgages and will facilitate comparisons between the GSE and HMDA data bases.

(4) The Department proposes to change the Federal Guarantee (Field #27) from YES (proprietary) to NO (non-proprietary) and to make such data publicly available in the Census Tract File. These changes will make possible analyses by researchers beyond HUD of conventional and Federally guaranteed mortgages at the local level and will facilitate comparisons between the GSE and HMDA data bases.

(5) The Department proposes to change the Borrower Race/National Origin (Field #41) from YES (proprietary) to NO (non-proprietary) and to make such data publicly available in National File A and National File B. The Department also proposes not to combine Field #41 and Field #42 in National File A and National File B and to delete subgroup #7 indicating that Borrower and Co-Borrower are in different race/national origin categories. The Department also proposes to distinguish in the public use data base causes of missing data coded by the GSEs as ''7'' (information not provided in mail or telephone application), ''8'' (not applicable), and ''9'' (not available). These changes will make possible more precise analyses at the national level by researchers beyond HUD relating to household minority status and will facilitate comparisons between the GSE and HMDA data bases.

(6) The Department proposes to change Co-Borrower Race/National Origin (Field #42) from YES (proprietary) to NO (non-proprietary) and to make such data publicly available in National File A and National File B, as discussed above in paragraph (5) with respect to Field #42.

(7) The Department proposes to change the Occupancy Code (Field #47) from YES (proprietary) to (a) ''NO'' (non-proprietary) and make the data publicly available in National File A; and (b) ''YES but Recode'' and to make the recoded data publicly available in the Census Tract File. The Department proposes to recode this data as:

1=Owner-Occupied Property (1–4 units)
2=Investment Property (1–4 units)
9=Not Available

This change will make possible separate analyses by researchers beyond HUD for owner-occupied properties and rental properties and will facilitate comparisons between the GSE and HMDA data bases.

b. GSE Multifamily Mortgage Data

(1) The Department proposes to make Date of Mortgage Note (Field #19) available in the National File, subject to recoding as follows:

1=Originated Same Calendar Year as Acquired
2=Originated Prior to Calendar Year of Acquisition
9=Missing

The change will permit analysis of multifamily loans originated in prior years by researchers beyond HUD and will facilitate comparisons between the GSE and HMDA data bases.

(2) The Department proposes to change the Purpose of Loan (Field #21) to revise the definition of value ''9'' as follows: 9=Not Applicable/Not Available.

This is a clarifying change.

(3) The Department proposes to change Type of Seller Institution (Field #33) from YES (proprietary) to NO (non-proprietary) in the National File. This change, in connection with others being proposed, will facilitate comparisons between the GSE and HMDA data bases and will also facilitate analyses by researchers beyond HUD of affordability, property, size, and other key characteristics by type of seller at the national level.

3. *Comments Sought.* HUD's specification of the data elements to be included in the public use data base involves complex issues and requires sensitivity to both Congress's concern that there be complete and accurate data

on the GSEs' activities and that there be protection of legitimately proprietary information submitted by the GSEs to the Department. In addition to public comments on these issues along with specific examples of data where disclosure furthers the public interest, comments are requested on the specific changes proposed above. HUD is considering two other changes to the multifamily mortgage data base and invites comments on the nature of these changes—(a) making available information on the term of the mortgage at origination recoded to group the data into buckets (*e.g.,* less than seven years, seven years to less than ten years, ten years to less than 20 years, and more than 20 years); and (b) making available information on the type of acquisition (*e.g.,* cash, swap, credit enhancement, bond/debt purchased, missing and other). Both of these changes would enhance the type of multifamily analyses that could be conducted using the public use data base. Comment is also sought about whether certain data elements that are classified as proprietary when submitted to the Department might no longer be so classified after several years, because they would be unlikely to provide proprietary information about the GSEs' current business activities.

Finally, the Department requests comments on what additional loan level information regarding the GSEs' mortgage purchases—on either a census tract or national level—would be useful to release to expand the public's understanding of the role the GSEs play in the mortgage market. The Department must protect the GSEs' proprietary interests with regard to the loan level data. However, when initially establishing the loan level data base, HUD took a conservative approach in making determinations about the proprietary nature of the loan level data elements. With the benefit of several years of experience with the public use data base, HUD believes it is appropriate to review the initial determinations with regard to the proprietary nature of individual loan level elements and welcomes public comment on what additional data should be made available, why it is needed and how the GSEs might be impacted through the release of this information. Possible examples of data that might be of interest to the public is the availability of data on loan-to-value ratios, special loan program characteristics, and how individual loans are scored for housing goal purposes at the census tract level.

III. Specific Areas for Public Comment

Comment is invited on all aspects of the proposed regulation. In addition, the Department requests comments on several specific issues. These questions are discussed in context in Section II of the preamble and are repeated below for the convenience of commenters:

This proposed rule solicits comments on specific changes to definitions applicable to the housing goal levels, establishment of new housing goals, new requirements for counting mortgage purchases under the goals, and an expansion of loan level data available to the public on the GSEs' mortgage loan purchases.

A. Definitions

Comments are requested to the proposed definitional changes of the terms ''Median Income,'' ''Metropolitan Areas,'' ''Refinancing'' and ''Underserved Areas'' in § 81.2.

B. Housing Goal Levels

Comments are requested on the proposed level of the housing goals described below and on whether the level of the proposed housing goals is appropriate given the statutory factors HUD must consider in setting the goals, and in light of the market estimates of the GSEs' shares of the affordable housing market.

1. *Low- and Moderate-Income Housing Goal.* The rule proposes to amend § 81.2 to change the level of the annual housing goal for mortgage purchases qualifying under the Low- and Moderate-Income Housing Goal to be 48 percent of eligible units financed in calendar year 2000, and 50 percent of eligible units financed in each of calendar years 2001, 2002 and 2003.

2. *Central Cities, Rural Areas, and Other Underserved Areas Housing Goal (Geographically Targeted Goal).* The rule proposes to amend § 81.13 to change the level of the annual housing goal for mortgage purchases qualifying under the Geographically Targeted Goal to be 29 percent of eligible units financed in calendar year 2000, and 31 percent of eligible units financed in each of calendar years 2001, 2002 and 2003.

3. *Special Affordable Housing Goal.* The rule proposes to amend § 81.14 to change the level of the annual housing goal for mortgage purchases qualifying under the Special Affordable Housing Goal to be 18 percent of eligible units financed in calendar year 2000, and 20 percent of eligible units financed in each of calendar years 2001, 2002 and 2003.

4. *Special Affordable Housing Multifamily Subgoal.* For the calendar years 2000 through 2003, the rule proposes to amend § 81.14 to change the level of the annual housing subgoal for mortgage purchases qualifying under the Special Affordable Housing Multifamily Subgoal to be 0.9 percent of the dollar volume of combined (single family and multifamily) 1998 mortgage purchases in calendar year 2000, and 1.0 percent of the dollar volume of combined (single family and multifamily) 1998 mortgage purchases in each of calendar years 2001, 2002 and 2003.

C. Possible Changes to Underserved Areas in Geographically Targeted Goal

The Department is considering several possible changes to what is considered an underserved area for purposes of counting mortgage purchases under the Geographically Targeted Goal.

1. *Metropolitan Area.* HUD seeks comment on the proposed options for revising the definition of underserved metropolitan areas in an effort to more accurately target underserved areas with higher mortgage denial rates. Specifically, HUD is considering two possible changes to the definition. The first option being considered is to change the current tract income ratio to an ''enhanced'' tract income ratio and to require that for tracts to qualify they must (1) calculate the tract income ratio based on the ratio of tract median income to the greater of the national metropolitan median income or the MSA median income; and (2) have a tract income ratio at or below 80 percent. The second option being considered is to increase the requirement for a tract's minority population from the current 30 percent to 50 percent. The Department is also requesting comments on the extent to which these definitional changes are likely to increase the availability of credit to areas with high denial rates.

2. *Tribal Lands.* The Department seeks comment on the amended definition of underserved areas in § 81.2 that includes low-income and/or high minority American Indian Reservations and trust lands in the definition of underserved areas for both metropolitan and non-metropolitan areas.

3. *Rural Areas.* HUD also seeks public comment on alternative methodologies and sources of rural market data that HUD might use to define underserved non-metropolitan/rural areas. Specifically, HUD seeks comment on whether the Department should follow a tract-based approach in defining underserved rural areas, which would be consistent with the tract-based definition used in metropolitan areas. As technology and computer mapping

capabilities have evolved since 1995, it may be appropriate to revisit the issue of whether entire counties or census tracts within the counties should be used to define rural underserved areas.

D. Possible Changes to the Structure of the Special Affordable Housing Multifamily Subgoal

The Department seeks comment on whether the special affordable multifamily subgoal proposed that is based on a percentage of total dollar volume of mortgages purchased, or the possible alternative structures presented that base the subgoal on (a) the number of units financed, (b) a percent of current multifamily mortgage purchases, or (c) the number of mortgages acquired, are reasonable and desirable approaches to closing market gaps in the very low- and low-income rental market. HUD also solicits comment on the appropriate level for the subgoal as proposed, or under the various possible structures presented, and how the possible levels illustrated herein would likely impact multifamily acquisitions, especially for very low- and low-income multifamily units.

E. Bonus Points and Subgoals

Specifically, the Department invites comments on (a) whether, for the four year period ending December 31, 2003, § 81.16(c)(10) should be added to allow small multifamily properties (5–50 units) and all the units in owner-occupied 2–4 unit properties to receive double weight in the numerator for each of the three housing goals that otherwise qualify for the housing goals; and (b) how to count small multifamily properties for purposes of receiving bonus points that may be aggregated into larger financing packages. The Department also seeks comments on the utility of applying similar regulatory incentives (bonus points and/or subgoals) to other underserved segments of the market. In addition, HUD requests comments on the following questions that relate to bonus points and subgoals in general:

1. Whether HUD should use either bonus points or subgoals to target mortgage purchases for one or more of the areas of concern identified earlier?

2. Whether one or more of these areas would benefit more from bonus points or establishment of subgoals and why? If bonus points are suggested, the amount of bonus points which should be assigned and why?

3. Whether there are other areas not identified where bonus points and/or subgoals should be considered?

F. Calculating Performance Under the Housing Goals

The Department invites comments on clarifications and revisions to certain requirements for calculating performance under the housing goals.

1. *Temporary Adjustment Factor for Freddie Mac.* HUD requests comments on the proposal to provide Freddie Mac with an incentive to further expand the scope of its multifamily operations by providing them with a Temporary Adjustment Factor. The proposed rule calculates Freddie Mac's performance under the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal by counting each unit in a multifamily property with more than 50 units meeting the definition of one or both housing goals as 1.2 units (the Temporary Adjustment Factor) in the numerator in determining the respective housing goal percentage. HUD specifically requests comments on whether the proposed temporary adjustment factor for Freddie Mac is set at an appropriate level, and if such an adjustment factor should be phased out prior to 2003 or apply for the entire four year goal cycle.

2. *Data on Unit Affordability.* The Department seeks comments on the proposed revisions to § 81.15(d) and (e)(6) that identify the treatment for purposes of counting under the housing goals of those cases where a GSE does not obtain rental data on units, and welcomes suggestions for alternative ways of addressing the issue.

a. *Multifamily Rental Units.* For units in multifamily properties, the Department proposes to allow the use by a GSE of estimated rents based on market rental data. The Department will review and approve the GSEs' data sources and methodologies for estimating rents on multifamily units prior to their use, to assure reliability. Estimated rental data submitted to the Department shall be so identified by the GSE. HUD requests comments on whether it should establish a percentage ceiling for the GSEs' use of estimated data for multifamily mortgage purchases. The Department further proposes to allow a GSE to exclude units in multifamily properties from the denominator as well as the numerator in calculating performance under the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal when the GSE lacks sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the goal, and when the application of estimated rents based on an approved market rental data source and methodology is not possible.

b. *Single Family Rental Units.* For purposes of counting rental units in 1–4 unit single family properties toward achievement of the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, the Department proposes to allow a GSE to exclude the rental units in 1–4 unit single family properties from the denominator as well as the numerator in calculating performance under the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal when the GSE lacks rent sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the Low- and Moderate Income Housing Goal or the Special Affordable Housing Goal.

c. Single Family Owner-Occupied Units. Comments are requested on the Department's proposal to allow a GSE to exclude certain single family owner-occupied units from the denominator as well as the numerator in calculating performance under the Low- and Moderate-Income Housing Goal when the GSE lacks sufficient information on borrower income to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the goal, provided the mortgaged property is located in a census tract with median income less than or equal to area median income according to the most recent census. Such exclusion from the denominator and numerator will be permitted up to a ceiling of one percent (1%) of the total number of single family, owner-occupied dwelling units eligible to be counted toward the respective housing goal in the current year. Mortgage purchases in excess of the ceiling will be included in the denominator and excluded from the numerator.

3. Seasoned Mortgage Loan Purchases. Comments are requested on specific changes that are proposed in § 81.14 that address how purchases of seasoned mortgage portfolios receive full credit under the Special Affordable Housing Goal. Changes to § 81.16 are proposed to clarify the treatment of seasoned mortgages in calculating goal performance. The suggested changes specifically provide direction and guidance to the GSEs for the purpose of determining whether a seller of special affordable seasoned mortgage portfolios is adequately engaged in a specific program to reinvest the proceeds of the loan sale into additional special affordable lending. In addition, commenters are invited to provide their views on how to identify and define

those classes of organizations or institutions who are primarily engaged in financing affordable housing mortgages, including possibly State Housing Finance Agencies or Special Affordable Housing Loan Consortia, or other types of businesses that further the purpose of the Special Affordable Housing Goal. In addition to specific proposed changes to the regulation, commenters are invited to share their views as to whether any additional exemptions or changes should be established under the recycling provisions that further its purpose. Comments are also specifically invited on (1) what, if any, provisions should be included in the proposed rule to address the various affiliate structures of depository institutions; and (2) the treatment under the recycling provisions of structured transactions where the mortgage loans acquired were originated by a depository institution or mortgage banker engaged in mortgage lending on special affordable housing but acquired and sold by a third party, *e.g.,* an investment banking firm that is not in the business of affordable housing lending.

4. *Certain Federally Insured or Guaranteed Mortgages.* Comments are requested on the proposed change to § 81.16(b)(3) to except mortgages under the HECM program, mortgages guaranteed by RHS and loans made under FHA's Section 248 program and HUD's Section 184 program on properties in tribal lands from the general exclusion under the rules for non-conventional mortgage loans, and to allow the Department to count non-conventional mortgage purchases under the goals where the Department determines, in writing, that the financing needs addressed by such program are not well served and that mortgage purchases under such program should count. In addition, the proposed rule provides that where non-conventional mortgage purchases will now count toward the housing goals, they no longer will be excluded from the denominator of the GSEs' mortgage purchases as are other non-conventional mortgage loans.

5. *Other Counting Changes.* Comments are welcome on the following specific changes to counting requirements contained in the proposed rule: (a) Allowing half-credit for purchases of HUD Title I loans under the Special Affordable Housing Goal (§ 81.14); (b) amending the calculation of ''Denominator'' to clarify that the denominator does not include GSE transactions or activities that are not mortgages or that are specifically excluded mortgage purchase transactions (§ 81.16); (c) excluding certain single family balloon mortgages from treatment as a refinancing at the time of conversion to a fully amortizing note (§§ 81.2 and 81.16); (d) providing partial or full credit for actions that assist in maintaining the affordability of multifamily properties with expiring assistance contracts including how and to what extent the GSEs should receive credit for such actions; and (e) adding the designation of ''especially low-income'' in relationship to the Special Affordable Housing Goal (§§ 81.14, 18.17, 81.18, and 81.19). In addition, while no specific change has been proposed, comments are requested on whether the final rule should disallow goals credit for high cost mortgage loans. The Department also seeks comments on the following: (i) If goals credit is restricted for such loans, should the HOEPA definition be used, or should an alternative definition be established for purposes of this rule? (ii) What are the potential benefits, if any, associated with the GSEs' presence in the various higher cost mortgage markets including mortgages with annual percentage rates between those of the prime market and the market for high cost mortgage loans (for example, standardization of underwriting guidelines and reductions in interest rates)? (iii) What are the potential dangers, if any, associated with the GSEs' presence in various higher cost mortgage markets? Finally, the Department requests comments on what additional reporting data would be useful for the purposes of monitoring the GSEs' activities in this area and on whether certain of these data elements should be included in the public use data base. Possible data elements that could be collected for Department monitoring purposes include loan level data on the annual percentage rate, debt-to-income ratio, points and fees, and prepayment penalties.

6. *Provision for HUD to Review New Activities to Determine Appropriate Counting Under the Housing Goals.* The Department is requesting comments on the proposal to add a provision (§ 81.16(d)) for HUD to review activities of the GSEs to ensure that the counting of transactions towards the housing goals is consistent with FHEFSSA and advise the GSEs of the Department's determination with regard to credit for purposes of counting such transactions under the housing goals.

7. *Credit Enhancements.* In relation to credit enhancements, HUD invites comments on the following questions:

a. Given the wide range of institutional arrangements pertaining to credit enhancements and the inter-relationships between credit enhancements and other considerations such as loan-to-value ratio and guarantee fee, how should the credit risk to which the GSEs are exposed be measured under various types of credit enhancement scenarios?

b. Assuming credit risk can be adequately measured, should HUD give partial credit under the housing goals when credit enhancements result in a substantial portion of the credit risk of the transaction being borne by the seller or a third party? For example, if the GSE bears less than 50 percent of the credit risk of a transaction should the GSE receive no credit toward housing goal performance? If the GSE assumes between 50 percent and 75 percent of the credit risk of a transaction, should the GSE receive 50 percent credit for housing goal purposes?

c. What would be the advantages and disadvantages of linking the amount of goals credit on a GSE mortgage purchase to the degree of associated credit risk? What are the possible effects on low- and moderate-income families and on underserved areas of the GSEs' use of various credit enhancements and how might they be affected if goals credit were linked to the degree of associated credit risk? Would there be potential effects on liquidity or other mortgage market factors?

d. Assuming credit risk can be adequately measured, should HUD establish a minimum percentage in the range of 0 to 100 percent for the amount of credit risk borne by the GSEs on their mortgage purchases in order for such purchases to count toward the housing goals?

e. If HUD establishes a minimum threshold for credit risk, should it be the same for multifamily and single family purchases, or should it be different for each? Should HUD establish the same threshold for all types of credit enhancements, or should this differ between types of credit enhancements? At what level should the threshold(s) be established?

f. Should HUD measure counterparty risk on seller-provided credit enhancements? If so, how?

g. Should HUD evaluate GSE performance in relation to the use of credit enhancements by calculating and comparing the risk-adjusted rate of return under the use of various credit enhancement alternatives?

G. Access to Information

HUD's specification of the data elements to be included in the public use data base involves complex issues and requires sensitivity to both Congress's concern that there be

complete and accurate data on the GSEs' activities and that there be protection of legitimately proprietary information submitted by the GSEs to the Department. In addition to public comments on these issues along with specific examples of data where disclosure furthers the public interest, comments are requested on the specific changes proposed to the rule. HUD is considering two other changes to the multifamily mortgage data base and invites comments on the feasibility of these changes—(a) making available information on the term of the mortgage at origination recoded to group the data into buckets; and (b) making available information on the type of acquisition. Both of these changes would enhance the type of multifamily analyses that could be conducted using the public use data base. Comment is also sought about whether certain data elements that are classified as proprietary when submitted to the Department might no longer be so classified after several years, because they would be unlikely to provide proprietary information about the GSEs' current business activities. Finally, the Department requests comments on what additional loan level information regarding the GSEs' mortgage purchases—on either a census tract or national level—would be useful to release to expand the public's understanding of the role the GSEs play in the mortgage markets.

IV. Findings and Certifications

A. Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review,* which the President issued on September 30, 1993. This rule was determined economically significant under E.O. 12866. Any changes made to this proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC. The initial Economic Analysis prepared for this rule is also available for public inspection in the Office of the Rules Docket Clerk.

B. Congressional Review of Major Final Rules

This rule is a ''major rule'' as defined in Chapter 8 of 5 U.S.C. The rule will be submitted for Congressional review in accordance with this chapter at the final rule stage.

C. Paperwork Reduction Act

HUD's collection of information on the GSEs' activities has been reviewed and authorized by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), as implemented by OMB in regulations at 5 CFR part 1320. The OMB control number is 2502–0514.

D. Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this proposed rule would not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction; nor would it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. This proposed regulation is applicable only to the GSEs, which are not small entities for purposes of the Regulatory Flexibility Act, and, thus, does not have a significant economic impact on a substantial number of small entities.

F. Executive Order 13132, Federalism

Executive Order 13132 (''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 [88] (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 81

Accounting, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Accordingly, 24 CFR part 81 is proposed to be amended as follows:

PART 81—THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

1. The authority citation for 24 CFR part 81 continues to read as follows:

Authority: 12 U.S.C. 1451 *et seq.*, 1716–1723h, and 4501–4641; 42 U.S.C. 3535(d) and 3601–3619.

2. Section 81.2, is amended by revising the definitions of ''*Median Income*'' ''*Metropolitan Area*'', and ''*Underserved Area,*'' and by adding a new paragraph (7) to the definition of ''*Refinancing,*'' to read as follows:

§ 81.2 Definitions.

* * * * *

Median Income means, with respect to an area, the unadjusted median family income for the area and most recently determined and published by HUD. HUD will provide the GSEs, on an annual basis, with information specifying how HUD's published median family income estimates for metropolitan areas are to be applied for the purposes of determining median family income in such areas.

Metropolitan Area means a metropolitan statistical area (''MSA''), or primary metropolitan statistical area (''PMSA''), or a portion of such an area for which median family income estimates are published annually by HUD.

* * * * *

Refinancing means: * * *

* * * * *

(7) A conversion of a balloon mortgage note on a single family property to a fully amortizing mortgage note provided the GSE already owns or

[88] Pub. L. 104–4, approved March 22, 1995.

has an interest in the balloon note at the time of the conversion.

* * * * *

Underserved Area means:

(1) For purposes of the definitions of ''*Central City*'' and ''*Other Underserved Area*'', a census tract, a Federal or State American Indian reservation or tribal or individual trust land, or the balance of a census tract excluding the area within any Federal or State American Indian reservation or tribal or individual trust land, having:

(i) A median income at or below 120 percent of the median income of the metropolitan area and a minority population of 30 percent or greater; or

(ii) A median income at or below 90 percent of median income of the metropolitan area.

(2) For purposes of the definition of ''*Rural Area*'':

(i) In areas other than New England, a whole county, a Federal or State American Indian reservation or tribal or individual trust land, or the balance of a county excluding the area within any Federal or State American Indian reservation or tribal or individual trust land, having:

(A) A median income at or below 120 percent of the greater of the State non-metropolitan median income or the nationwide non-metropolitan median income and a minority population of 30 percent or greater; or

(B) A median income at or below 95 percent of the greater of the State non-metropolitan median income or nationwide non-metropolitan median income.

(ii) In New England, a whole county having the characteristics in paragraph (2)(i)(A) or (2)(i)(B) of this definition; a Federal or State American Indian reservation or tribal or individual trust land, having the characteristics in paragraph (2)(i)(A) or (2)(i)(B) of this definition; or the balance of a county, excluding any portion that is within any Federal or State American Indian reservation or tribal or individual trust land, or metropolitan area where the remainder has the characteristics in paragraph (2)(i)(A) or (2)(i)(B) of this definition.

(3) Any Federal or State American Indian reservation or tribal or individual trust land that includes land that is both within and outside of a metropolitan area and that is designated as an underserved area by HUD. In such cases, HUD will notify the GSEs as to applicability of other definitions and counting conventions.

* * * * *

3. Section 81.12 is amended as follows:

a. Paragraph (b) is amended by revising the last sentence; and

b. Paragraph (c) is revised, to read as follows:

§ 81.12 Low- and Moderate-Income Housing Goal.

* * * * *

(b) *Factors.* * * * A statement documenting HUD's considerations and findings with respect to these factors, entitled ''Departmental Considerations to Establish the Low- and Moderate-Income Housing Goal,'' was published in the **Federal Register** on [date of publication of final rule will be inserted].

(c) *Goals.* The annual goals for each GSE's purchases of mortgages on housing for low- and moderate-income families are:

(1) For calendar year 2000, 48 percent of the total number of dwelling units financed by that GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA;

(2) For each of the calendar years 2001–2003, 50 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years unless otherwise adjusted by HUD in accordance with FHEFSSA; and

(3) For calendar year 2004 and thereafter HUD shall establish annual goals. Pending establishment of goals for calendar year 2004 and thereafter, the annual goal for each of those calendar years shall be 50 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those calendar years.

4. Section 81.13 is amended as follows:

a. Paragraph (b) is amended by revising the last sentence; and

b. Paragraph (c) is revised, to read as follows:

§ 81.13 Central Cities, Rural Areas, and Other Underserved Areas Housing Goal.

* * * * *

(b) *Factors.* * * * A statement documenting HUD's considerations and findings with respect to these factors, entitled ''Departmental Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal,'' was published in the **Federal Register** on [date of publication of final rule will be inserted].

(c) *Goals.* The annual goals for each GSE's purchases of mortgages on housing located in central cities, rural areas, and other underserved areas are:

(1) For calendar year 2000, 29 percent of the total number of dwelling units financed by that GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA;

(2) For each of the calendar years 2001–2003, 31 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years unless otherwise adjusted by HUD in accordance with FHEFSSA; and

(3) For calendar year 2004 and thereafter HUD shall establish annual goals. Pending establishment of goals for calendar year 2004 and thereafter, the annual goal for each of those calendar years shall be 31 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those calendar years.

* * * * *

5. Section 81.14 is amended as follows:

a. Paragraph (b) is amended by revising the last sentence;

b. Paragraph (c) is revised;

c. Paragraph (d) is amended by revising paragraph (d)(1)(i);

d. Paragraph (e) is amended by revising paragraphs (e)(2), (e)(3), and (e)(4);

e. Paragraph (f) is redesignated as paragraph (g) and the last sentence of the newly redesignated paragraph (g) is revised; and

f. A new paragraph (f) is added; to read as follows:

§ 81.14 Special Affordable Housing Goal.

* * * * *

(b) * * * A statement documenting the HUD's considerations and findings with respect to these factors, entitled ''Departmental Considerations to Establish the Special Affordable Housing Goal,'' was published in the **Federal Register** on [date of publication of final rule will be inserted].

(c) *Goals.* The annual goals for each GSE's purchases of mortgages on rental and owner-occupied housing meeting the then existing, unaddressed needs of and affordable to low-income families in low-income areas and very low-income families are:

(1) For calendar year 2000, 18 percent of the total number of dwelling units financed by that GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA. The goal shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 0.9 percent of the dollar volume of combined (single family and multifamily) mortgages purchased by the respective GSE in 1998 unless otherwise adjusted by HUD in accordance with FHEFSSA;

(2) For each of the calendar years 2001, 2002, and 2003, 20 percent of the total number of dwelling units financed by that GSE's mortgage purchases in

each of those years unless otherwise adjusted by HUD in accordance with FHEFSSA. The goal for each calendar year shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the dollar volume of combined (single family and multifamily) mortgages purchased by the respective GSE in 1998 unless otherwise adjusted by HUD in accordance with FHEFSSA; and

(3) For calendar year 2004 and thereafter HUD shall establish annual goals. Pending establishment of goals for calendar year 2004 and thereafter, the annual goal for each of those calendar years shall be 20 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those calendar years. The goal for each such calendar year shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the dollar volume of combined (single family and multifamily) mortgages purchased by the respective GSE in 1998.

* * * * *

(d)(1) * * *

(i) 20 percent of the dwelling units in the particular multifamily property are affordable to especially low-income families; or

* * * * *

(e) * * *

* * * * *

(2) Mortgages under HUD's Home Equity Conversion Mortgage (''HECM'') Insurance Program, 12 U.S.C. 1715 z–20; mortgages guaranteed by the Rural Housing Services' Guaranteed Rural Housing Loan Program, 7 U.S.C. 1933; and mortgages on properties on tribal lands insured under FHA's Section 248 program, 12 U.S.C. 1715 z–13, or HUD's Section 184 program, 12 U.S.C. 1515 z–13a; meet the requirements of 12 U.S.C. 4563(b)(1)(A)(i) and (ii).

(3) HUD will give full credit toward achievement of the Special Affordable Housing Goal for the activities in 12 U.S.C. 4563(b)(1)(A), provided the GSE submits documentation to HUD that supports eligibility under 12 U.S.C. 4563(b)(1)(A) for HUD's approval.

(4)(i) For purposes of determining whether a seller meets the requirement in 12 U.S.C. 4563(b)(1)(B), a seller must currently operate on its own or actively participate in an on-going, discernible, active, and verifiable program directly targeted at the origination of new mortgage loans that qualify under the Special Affordable Housing Goal.

(ii) A seller's activities must evidence a current intention or plan to reinvest the proceeds of the sale into mortgages qualifying under the Special Affordable Housing Goal, with a current commitment of resources on the part of the seller to this purpose.

(iii) A seller's actions must evidence willingness to buy qualifying loans when these loans become available in the market as part of active, on-going, sustainable efforts to ensure that additional loans that meet the goal are originated.

(iv) Actively participating in such a program includes purchasing qualifying loans from a correspondent originator, including a lender or qualified housing group, that operates an on-going program resulting in the origination of loans that meet the requirements of the goal, has a history of delivering, and currently delivers, qualifying loans to the seller.

(v) The GSE must verify and monitor that the seller meets the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section and develop any necessary mechanisms to ensure compliance with the requirements, except as provided in paragraph (e)(4)(vi) of this section.

(vi) Where a seller's primary business is originating mortgages on housing that qualifies under this Special Affordable Housing Goal (*e.g.*, when such seller is an institution that is regularly in the business of mortgage lending; a BIF-insured or SAIF-insured depository institution; and subject to, and has received at least a satisfactory performance evaluation rating for at least the two most recent consecutive examinations under, the Community Reinvestment Act), such seller is presumed to meet the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section.

(vii) For a class or classes of institutions or organizations whose primary business is financing affordable housing mortgages, *e.g.*, State Housing Finance Agencies or Special Affordable Housing Loan Consortia, such classes of organizations or institutions are presumed to meet the requirements of paragraphs (e)(4)(i) through (e)(4)(iv) of this section. A determination that specific classes of institutions or organizations are primarily engaged in the business of financing affordable housing mortgages must be made in advance by HUD.

* * * * *

(f) *Partial credit activities.* Mortgages insured under HUD's Title I program, which includes property improvement and manufactured home loans, shall receive one-half credit toward the Special Affordable Housing Goal until such time as the Government National Mortgage Association fully implements a program to purchase and securitize Title I loans.

(g) *No credit activities.* * * * For purposes of this paragraph (g), ''mortgages or mortgage-backed securities portfolios'' includes mortgages retained by Fannie Mae or Freddie Mac and mortgages utilized to back mortgage-backed securities.

* * * * *

6. In § 81.15, paragraph (a) is revised, paragraph (d) is amended by adding a new sentence at the end, and paragraph (e) is amended by redesignating paragraph (e)(6) as (e)(7), and by adding a new paragraph (e)(6), to read as follows:

§ 81.15 General requirements.

(a) *Calculating the numerator and denominator.* Performance under each of the housing goals shall be measured using a fraction that is converted into a percentage.

(1) *The numerator.* The numerator of each fraction is the number of dwelling units financed by a GSE's mortgage purchases in a particular year that count toward achievement of the housing goal.

(2) *The denominator.* The denominator of each fraction is, for all mortgages purchased, the number of dwelling units that could count toward achievement of the goal under appropriate circumstances. The denominator shall not include GSE transactions or activities that are not mortgages or mortgage purchases as defined by HUD or transactions that are specifically excluded as ineligible under § 81.16(b).

(3) *Missing data or information.* When a GSE lacks sufficient data or information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of a particular housing goal, that mortgage purchase shall be included in the denominator for that housing goal, except under the circumstances described in paragraphs (d) and (e)(6) of this section.

* * * * *

(d) *Counting owner-occupied units.* * * * When the income of the mortgagors is not available to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, a GSE may exclude single- family owner-occupied units located in census tracts with median income less than or equal to area median income according to the most recent census from the denominator as well as the numerator, up to a ceiling of one percent of the total number of single-family owner-occupied dwelling units eligible to be counted toward the respective housing goal in the current year. Mortgage

purchases in excess of the ceiling will be included in the denominator and excluded from the numerator.

(e) * * *

* * * * *

(6) *Income or Rent Data Unavailable.* (i) *Multifamily.* When neither the income of prospective or actual tenants of a dwelling unit nor actual or average rent data is available, a GSEs' performance with respect to such a unit may be evaluated with estimated rents based on market rental data, so long as the Department has reviewed and approved the data source and methodology for such estimated data. The GSE must identify such data as estimated data. When the application of estimated rents based on an approved market rental data source and methodology is not possible, and therefore the GSE lacks sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward the achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, a GSE may exclude units in multifamily properties from the denominator as well as the numerator in calculating performance under those goals.

(ii) *Rental units in 1–4 unit single family properties.* When neither the income of prospective or actual tenants of a rental unit in a 1–4 unit single family property nor actual or average rent data is available, and, therefore, the GSE lacks sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, a GSE may exclude rental units in 1–4 unit single family properties from the denominator as well as the numerator in calculating performance under those goals.

* * * * *

7. Section 81.16 is amended as follows:

a. Paragraph (a) is revised;

b. Paragraph (b) is amended by revising paragraphs (b)(3) and (b)(9) and by adding a new paragraph (b)(10);

c. Paragraph (c) is amended by revising the heading, by adding introductory text, by revising paragraph (c)(6), and by adding new paragraphs (c)(9), (c)(10) and (c)(11); and

d. A new paragraph (d) is added; to read as follows:

§ 81.16 Special counting requirements.

(a) *General.* HUD shall determine whether a GSE shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals. In this determination, HUD will consider whether a transaction or activity of the GSE is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market, provided however that such mortgage purchase actually fulfills the GSE's purposes and is in accordance with its Charter Act.

(b) * * *

* * * * *

(3) Purchases of non-conventional mortgages except:

(i) Where such mortgages are acquired under a risk-sharing arrangement with a Federal agency;

(ii) Mortgages under HUD's Home Equity Conversion Mortgage (''HECM'') Insurance Program, 12 U.S.C. 1715 z–20; mortgages guaranteed by the Rural Housing Services' Guaranteed Rural Housing Loan Program, 7 U.S.C. 1933; and mortgages on properties on tribal lands insured under FHA's Section 248 program, 12 U.S.C. 1715 z–13, or HUD's Section 184 program, 12 U.S.C. 1515 z–13a; or

(iii) Mortgages under other mortgage programs involving Federal guarantees, insurance or other Federal obligation where the Department determines in writing that the financing needs addressed by the particular mortgage program are not well served and that the mortgage purchases under such program should count under the housing goals, provided the GSE submits documentation to HUD that supports eligibility for HUD's approval.

* * * * *

(9) Single family mortgage refinancings that result from conversion of balloon notes to fully amortizing notes, if the GSE already owns or has an interest in the balloon note at the time conversion occurs. New purchases of balloon mortgages or mortgages for which the borrower has exercised a conversion option prior to purchase and/or guarantee by the GSE will be included in the numerator and denominator as appropriate in accordance with § 81.15.

(10) Any combination of (1) through (9) above.

(c) *Supplemental rules.* Subject to HUD's primary determination of whether a GSE shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals as provided in paragraph (a) of this section, the following supplemental rules apply:

* * * * *

(6) *Seasoned mortgages.* A GSE's purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of these goals and shall be included in the numerator, as appropriate, and the denominator in calculating the GSE's performance under the housing goals, except where the GSE has already counted the mortgage under a housing goal applicable to 1993 or any subsequent year, or where the Department determines, based upon a written request by a GSE, that a seasoned mortgage or class of such mortgages should be excluded from the numerator and the denominator in order to further the purposes of the Special Affordable Housing Goal.

* * * * *

(9) *Expiring assistance contracts.* In accordance with 12 U.S.C. 4565(a)(5), actions that assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring Section 8 contracts shall receive partial to full credit under the housing goals as determined by HUD. For purposes of the paragraph, ''actions'' include the restructuring or refinancing of mortgages, and credit enhancements or risk-sharing arrangements to modified or refinanced mortgages.

(10) *Bonus points.* The following transactions or activities, to the extent the units otherwise qualify for one or more of the housing goals, will receive bonus points toward the particular goal or goals, by receiving double weight in the numerator under a housing goal or goals and receiving single weight in the denominator for the housing goal or goals. Bonus points will not be awarded for the purposes of calculating performance under the special affordable housing multifamily subgoal included in § 81.14(c). All transactions or activities meeting the following criteria will qualify for bonus points even if a unit is missing affordability data and the missing affordability data is treated consistent with § 81.15(a)(3). Bonus points are available to the GSEs for purposes of determining housing goal performance through December 31, 2003. Beginning in calendar year 2004, bonus points are not available for goal performance counting purposes unless the Department extends their availability beyond December 31, 2003, for one or more types of activities and notifies the GSEs by letter of that determination.

(i) *Small multifamily properties.* HUD will assign double weight in the numerator under a housing goal or goals for each unit in small multifamily properties (5 to 50 units), provided, however, that bonus points will not be awarded for properties that are aggregated or disaggregated into 5–50

unit financing packages for the purpose of earning bonus points.

(ii) *Rental units in 2–4 unit owner-occupied properties.* HUD will assign double weight in the numerator under the housing goals for each unit in 2- to 4-unit owner-occupied properties, to the extent that the number of such units financed by mortgage purchases are in excess of 60 percent of the average number of units qualifying for the respective housing goal during the immediately preceding five years.

(11) *Temporary adjustment factor for Freddie Mac.* In determining Freddie Mac's performance on the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, HUD will count each qualifying unit in a property with more than 50 units as 1.2 units in calculating the numerator and as one unit in calculating the denominator, for the respective housing goal. HUD will apply this temporary adjustment factor for each calendar year from 2000 through 2003; for calendar years 2004 and thereafter, this temporary adjustment factor will no longer apply.

(d) *HUD review of transactions.* HUD will determine whether a class of transactions counts as a mortgage purchase under the housing goals. If a GSE is considering a class of transactions for purposes of counting under the housing goals, the GSE may provide HUD detailed information regarding the transactions for evaluation and determination in accordance with this section. In making its determination, HUD may also request and evaluate information from a GSE with regard to how the GSE believes the transactions should be counted. HUD will notify the GSE of its determination regarding the extent to which the class of transactions should count under the goals.

8. Section 81.17 is amended by adding a new paragraph (d), to read as follows:

§ 81.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).

* * * * *

(d) *Especially-low-income* means, in the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	35
2	40
3	45
4	50
5 or more	(*)

*50% plus (4.0% multiplied by the number of persons in excess of 4).

9. Section 81.18 is amended by adding a new paragraph (d), to read as follows:

§ 81.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).

(d) *For especially-low-income,* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	35
1 bedroom	37.5
2 bedrooms	45
3 bedrooms or more	(*)

*52% plus (6.0% multiplied by the number of bedrooms in excess of 3).

10. In § 81.19, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added, to read as follows:

§ 81.19 Affordability—Rent level definitions—tenant income is not known.

* * * * *

(d) *For especially-low-income,* maximum affordable rents to count as housing for especially-low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	10.5
1 bedroom	11.25
2 bedrooms	13.5
3 bedrooms or more	(*)

*15.6% plus (1.8% multiplied by the number of bedrooms in excess of 3).

* * * * *

Dated: January 20, 2000.

William C. Apgar,

Assistant Secretary for Housing.

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix A—Departmental Considerations to Establish The Low- and Moderate-Income Housing Goal

A. Introduction

1. Establishment of Goal

In establishing the Low- and Moderate-Income Housing Goals for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), collectively referred to as the Government-Sponsored Enterprises (GSEs), Section 1332 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4562) (FHEFSSA) requires the Secretary to consider:

1. National housing needs;
2. Economic, housing, and demographic conditions;
3. The performance and effort of the enterprises toward achieving the Low-and Moderate-Income Housing Goal in previous years;
4. The size of the conventional mortgage market serving low-and moderate-income families relative to the size of the overall conventional mortgage market;
5. The ability of the enterprises to lead the industry in making mortgage credit available for low- and moderate-income families; and
6. The need to maintain the sound financial condition of the enterprises.

2. Underlying Data

In considering the statutory factors in establishing these goals, HUD relied on data from the 1995 American Housing Survey (AHS), the 1990 Census of Population and Housing, the 1991 Residential Finance Survey (RFS), the 1995 Property Owners and Managers Survey (POMS), other government reports, reports submitted in accordance with the Home Mortgage Disclosure Act (HMDA), and the GSEs. In order to measure performance toward achieving the Low- and Moderate-Income Housing Goal in previous years, HUD analyzed the loan-level data on all mortgages purchased by the GSEs for 1993–98 in accordance with the goal counting provisions established by the Department in the December 1995 rule (24 CFR part 81).

3. Conclusions Based on Consideration of the Factors

The discussion of the first two factors covers a range of topics on housing needs and economic and demographic trends that are important for understanding mortgage markets. Information is provided which describes the market environment in which the GSEs must operate (for example information on trends in refinancing activity) and is useful for gauging the reasonableness of specific levels of the Low- and Moderate-Income Housing Goal. In addition, the severe housing problems faced by lower-income families are discussed.

The third factor (past performance) and the fifth factor (ability of the GSEs to lead the industry) are also discussed in some detail in this Appendix. The fourth factor (size of the market) and the sixth factor (need to maintain the GSEs' sound financial condition) are mentioned only briefly in this

Appendix. Detailed analyses of the fourth factor and the sixth factor are contained in Appendix D and in the economic analysis of this proposed rule, respectively.

The factors are discussed in sections B through H of this appendix. Section I summarizes the findings and presents the Department's conclusions concerning the Low- and Moderate-Income Housing Goal. The consideration of the factors in this Appendix has led the Secretary to the following conclusions:

(i) Despite the record national homeownership rate of 66.3 percent in 1998, much lower rates prevailed for minorities, especially for African-American households (46.1 percent) and Hispanics (44.7 percent), and these lower rates are only partly accounted for by differences in income, age, and other socioeconomic factors.

(ii) Pervasive and widespread disparities in mortgage lending continued across the nation in 1997, when the loan denial rate was 10.2 percent for white mortgage applicants, but 23.3 percent for African Americans and 18.8 percent for Hispanics.[1]

(iii) Despite strong economic growth, low unemployment, the lowest mortgage rates in more than 30 years, and relatively stable home prices, there is clear and compelling evidence of deep and persistent housing problems for Americans with the lowest incomes. The number of very-low-income American households with ''worst case'' housing needs remains at an all-time high—5.3 million.[2]

(iv) Changing population demographics will result in a need for the primary and secondary mortgage markets to meet nontraditional credit needs, respond to diverse housing preferences and overcome information barriers that many immigrants face. In addition, market segments such as single-family rental properties, small multifamily properties, manufactured housing, and older inner city properties would benefit from the additional financing and pricing efficiencies of a more active secondary mortgage market.

(v) The Low- and Moderate-Income Housing Goals for both GSEs were 40 percent in 1996 and 42 percent in 1997. Fannie Mae surpassed these goals, with a performance of 45.6 percent in 1996, 45.7 percent in 1997 and 44.1 percent in 1998. Freddie Mac's performance of 41.1 percent in 1996, 42.6 percent in 1997 and 42.9 percent in 1998 narrowly exceeded these goals.

(vi) Several studies have shown that both Fannie Mae and Freddie Mac lag behind depository institutions and the overall conventional conforming market in providing affordable home loans to lower-income borrowers and underserved neighborhoods. Fannie Mae has made efforts to improve its performance. Freddie Mac, however, has made much less improvement, and therefore continues to fall behind Fannie Mae, depositories, and the overall market in serving lower-income and minority families and their neighborhoods. Thus, there is room for both GSEs (but particularly Freddie Mac) to improve their funding of single-family home mortgages for lower-income families and underserved communities.

(vii) The GSEs' presence in the goal-qualifying market is significantly less than their presence in the overall mortgage market. Specifically, HUD estimates that they accounted for 39 percent of all owner-occupied and rental units financed in the primary market in 1997, but only 30 percent of low- and moderate-income units financed. Their role was even lower for low- and moderate-income rental properties, where they accounted for 24 percent of low- and moderate-income multifamily units financed and only 13 percent of low- and moderate-income single-family rental units financed.

(viii) Other issues have also been raised about the GSEs' affordable lending performance. A large percentage of the lower-income loans purchased by the enterprises have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the mortgage credit needs of lower-income families who do not have the cash to make a high down payment. Also, while single-family rental properties are an important source of low- and moderate-income rental housing, they represent only a small portion of the GSEs' business.

(ix) Freddie Mac has re-entered the multifamily market after withdrawing for a time in the early 1990s. Thus, concerns regarding Freddie Mac's multifamily capabilities no longer constrain their performance with regard to the Low- and Moderate-Income Housing Goal and for the Special Affordable Housing Goal to the same degree that prevailed at the time the Department issued its 1995 GSE regulations. However, Freddie Mac's multifamily presence remains proportionately lower than that of Fannie Mae. For example, units in multifamily properties accounted for 7.9 percent of Freddie Mac's mortgage purchases during 1996–1998, compared with 12.2 percent for Fannie Mae. Because a relatively large proportion of multifamily units qualify for the Low- and Moderate-Income Housing Goal and for the Special Affordable Housing Goal, Freddie Mac's weaker multifamily presence is a major factor contributing to its weaker overall performance on these two housing goals relative to Fannie Mae.

(x) The overall presence of both GSEs in the multifamily mortgage market falls short of their involvement in the single-family market. Specifically, the GSEs' purchases of 1997 originations have accounted for 49 percent of the owner market, but only 22 percent of the multifamily market. Further expansion of the presence of both GSEs in the multifamily market is needed in order for them to make significant progress in closing the gaps between the affordability of their mortgage purchases and that of the overall conventional market.

(xi) The GSEs have proceeded cautiously in expanding their multifamily purchases during the 1990s. Fannie Mae's multifamily lending has been described by Standard & Poor's as ''extremely conservative,'' and Freddie Mac has not experienced a single default on the multifamily mortgages it has purchased since 1993.[3] By the end of the 1998 calendar year, both GSEs' multifamily performance had improved to the point where multifamily delinquency rates were *less* than those in single-family.[4]

(xii) Because of the advantages conferred by Government sponsorship, the GSEs are in a unique position to provide leadership in addressing the excessive cost and difficulty in obtaining mortgage financing for underserved segments of the multifamily market, including small properties with 5–50 units and properties in need of rehabilitation.

B. Factor 1: National Housing Needs

This section reviews the general housing needs of low- and moderate-income families that exist today and are expected to continue in the near future. In so doing, the section focuses on the affordability problems of lower-income families and on racial disparities in homeownership and mortgage lending. It also notes some special problems, such as the need to rehabilitate our older urban housing stock.

1. Homeownership Gaps

Despite a record national homeownership rate, many Americans, including disproportionate numbers of racial and ethnic minorities, are shut out of homeownership opportunities. Although the national homeownership rate for all Americans was at an all-time high of 66.3 percent in 1998, the rate for minority households was less. The homeownership rate for African-American households was 46.1 percent. Similarly, just 44.7 percent of Hispanic households owned a home.

Importance of Homeownership. Homeownership is one of the most common forms of property ownership as well as savings.[5] In fact, home equity is the largest source of wealth for most Americans. Median net wealth for renters was less than five percent of the median net wealth for homeowners in 1995. Half of all homeowners in 1995 held more than half of their net wealth in the form of home equity. Even among low-income homeowners (household income less than $20,000), half held more than 70 percent of their wealth in home equity in 1995.[6] Thus a homeownership gap translates directly into a wealth gap.

Homeownership promotes social and community stability by increasing the

[1] Mortgage denial rates are based on 1997 HMDA data; data for selected manufactured housing lenders and subprime lenders are excluded from these comparisons.

[2] U.S. Department of Housing and Urban Development. *Waiting in Vain: Update on America's Rental Housing Crisis.* (March, 1999).

[3] ''Final Report of Standard & Poor's to the Office of Federal Housing Enterprise Oversight,'' February 3, 1997; Freddie Mac, *1998 Annual Report to Shareholders,* p. 6.

[4] Freddie Mac reported delinquency rates of 0.37 for multifamily and 0.50 percent for single-family in its *1998 Annual Report to Shareholders,* p. 30. Corresponding figures for Fannie Mae were 0.29 percent for multifamily and 0.58 percent for single-family *(1998 Annual Report to Shareholders,* p. 28).

[5] According to the National Association of Realtors, *Housing Market Will Change in New Millennium as Population Shifts,* (November 7, 1998), 45 percent of U.S. household wealth is in the form of home equity. Since 1968, home prices have increased each year, on average, at the rate of inflation plus up to two percentage points.

[6] Joint Center for Housing Studies of Harvard University. *State of the Nation's Housing 1997* (1997).

number of stakeholders and reducing disparities in the distributions of wealth and income. There is growing evidence that planning for and meeting the demands of homeownership may reinforce the qualities of responsibility and self-reliance. White and Green[7] provide empirical support for the association of homeownership with a more responsible, self-reliant citizenry. Both private and public benefits are increased to the extent that developing and reinforcing these qualities improve prospects for individual economic opportunities.

Barriers to Homeownership. Insufficient income, high debt burdens, and limited savings are obstacles to homeownership for younger families. As home prices skyrocketed during the late 1970s and early 1980s, real incomes also stagnated, with earnings growth particularly slow for blue collar and less educated workers. Through most of the 1980s, the combination of slow income growth and increasing rents made saving for home purchase more difficult, and relatively high interest rates required large fractions of family income for home mortgage payments. Thus, during that period, fewer households had the financial resources to meet down payment requirements, closing costs, and monthly mortgage payments.

Economic expansion and lower mortgage rates have substantially improved homeownership affordability during the 1990s. Many young, lower-income, and minority families who were closed out of the housing market during the 1980s have re-entered the housing market. However, many of these households still lack the financial resources and earning power to take advantage of today's homebuying opportunities. Several trends have contributed to the reduction in the real earnings of young adults without college education over the last 15 years, including technological changes that favor white-collar employment, losses of unionized manufacturing jobs, and wage pressures exerted by globalization. Fully 45 percent of the nation's population between the ages of 25 and 34 have no advanced education and are therefore at risk of being unable to afford homeownership.[8] African Americans and Hispanics, who have lower average levels of educational attainment than whites, are especially disadvantaged by the erosion in wages among less educated workers.

In addition to low income, high debts are a primary reason households cannot afford to purchase a home. According to a 1993 Census Bureau report, nearly 53 percent of renter families have both insufficient income and excessive debt problems that may cause difficulty in financing a home purchase.[9] High debt-to-income ratios frequently make potential borrowers ineligible for mortgages based on the underwriting criteria established in the conventional mortgage market.

An additional barrier to homeownership is the fear and uncertainty about the buying process and the risks of ownership. A study using focus groups with renters found that even among those whose financial status would make them capable of homeownership, many feel that the buying process was insurmountable because they feared rejection by the lender or being taken advantage of.[10] Also, many fear the obligations of ownership, because of the concerns about the risk of future deterioration of the house or the neighborhood.

Finally, discrimination in mortgage lending continues to be a barrier to homeownership. Disparities in treatment between borrowers of different races and neighborhoods of different racial makeup have been well documented. These disparities are discussed in the next section.

2. Disparities in Mortgage Financing

Disparities Between Borrowers of Different Races. Research based on Home Mortgage Disclosure Act (HMDA) data suggests pervasive and widespread disparities in mortgage lending across the Nation. For 1997, the denial rate for white mortgage applicants was 10.2 percent, while 23.3 percent of African-American and 18.8 percent of Hispanic applicants were denied. Even after controlling for income, the African-American denial rate was approximately twice that of white applicants. A major study by researchers at the Federal Reserve Bank of Boston found that mortgage denial rates remained substantially higher for minorities in 1991–93, even after controlling for indicators of credit risk.[11] African-American and Hispanic applicants in Boston with the same borrower and property characteristics as white applicants had a 17 percent denial rate, compared with the 11 percent denial rate experienced by whites. A subsequent study conducted at the Federal Reserve Bank of Chicago reports similar findings.[12]

Several possible explanations for these lending disparities have been suggested. The studies by the Boston and Chicago Federal Reserve Banks found that racial disparities cannot be explained by reported differences in creditworthiness. In other words, minorities are more likely to be denied than whites with similar credit characteristics, which suggests lender discrimination. In addition, loan officers, who may believe that race is correlated with credit risk, may use race as a screening device to save time, rather than devote effort to distinguishing the creditworthiness of the individual applicant.[13] This violates the Fair Housing Act.

Underwriting Rigidities. Underwriting rigidities may fail to accommodate creditworthy low-income or minority applicants. For example, under traditional underwriting procedures, applicants who have conscientiously paid rent and utility bills on time but have never used consumer credit would be penalized for having no credit record. Applicants who have remained steadily employed, but have changed jobs frequently, would also be penalized. Over the past few years, lenders, private mortgage insurers, and the GSEs have adjusted their underwriting guidelines to take into account these special circumstances of lower-income families. Many of the changes recently undertaken by the industry to expand homeownership have focused on finding alternative underwriting guidelines to establish creditworthiness that do not disadvantage creditworthy minority or low-income applicants.

However, because of the enhanced roles of credit scoring and automated underwriting in the mortgage origination process, it is unclear to what degree the reduced rigidity in industry standards will benefit borrowers who have been adversely impacted by the traditional guidelines. Some industry observers have expressed a concern that the greater flexibility in the industry's written underwriting guidelines may not be reflected in the numerical credit and mortgage scores which play a major role in the automated underwriting systems that the GSEs and others have developed. Thus lower-income and particularly minority loan applicants, who often have lower credit scores than other applicants, may be dependent on the willingness of lenders to take the time to look beyond such credit scores and consider any appropriate ''mitigating factors,'' such as the timely payment of their bills, in the underwriting process. For example, there is a concern in the industry that a ''FICO'' score less than 620 means an automatic rejection of a loan application without further consideration of any such factors.[14] This could disproportionately affect minority applicants. More information on the distribution of credit scores and on the

[7] Michelle J. White, and Richard K. Green. ''Measuring the Benefits of Homeowning: Effects on Children,'' *Journal of Urban Economics.* 41 (May 1997), pp. 441–61.

[8] Joint Center for Housing Studies of Harvard University. *State of the Nation's Housing 1998* (1998).

[9] Howard Savage and Peter Fronczek, *Who Can Afford to Buy A House in 1991?,* U.S. Bureau of the Census, Current Housing Reports H121/93–3, (July 1993), p. ix.

[10] Donald S. Bradley and Peter Zorn. ''Fear of Homebuying: Why Financially Able Households May Avoid Ownership,'' *Secondary Mortgage Markets* (1996).

[11] Munnell, Alicia H., Geoffrey M. B. Tootell, Lynn E. Browne, and James McEneaney, ''Mortgage Lending in Boston: Interpreting HMDA Data,'' *American Economic Review.* 86 (March 1996).

[12] William C. Hunter. ''The Cultural Affinity Hypothesis and Mortgage Lending Decisions,'' WP–95–8, Federal Reserve Bank of Chicago, (1995). In addition, a study undertaken for HUD also found higher denial rates among FHA borrowers for minorities after controlling for credit risk. See Ann B. Schnare and Stuart A. Gabriel. ''The Role of FHA in the Provision of Credit to Minorities,'' ICF Incorporated, Prepared for the U.S. Department of Housing and Urban Development, (April 25, 1994).

[13] See Charles W. Calomeris, Charles M. Kahn and Stanley D. Longhofer. ''Housing Finance Intervention and Private Incentives: Helping Minorities and the Poor,'' *Journal of Money, Credit and Banking.* 26 (August 1994), pp. 634–74, for more discussion of this phenomenon, which is called ''statistical discrimination.''

[14] The FICO score, developed by Fair, Isaac and Company, is summary index of an individual's credit history. The FICO score is based on elements from the applicant's credit report, such as number of delinquencies in the past year, number of trade lines, and the amount owed on trade lines as compared to the available maximum credit limits. The FICO score is said to reflect the credit risk of the applicant and a score of 620 is often cited as a threshold between being an acceptable and an unacceptable credit risk.

effects of implementing automated underwriting systems is needed.[15]

Disparities Between Neighborhoods. Mortgage credit also appears to be less accessible in low-income and high-minority neighborhoods. As discussed in Appendix B, 1997 HMDA data show that mortgage denial rates are nearly twice as high in census tracts with low-income and/or high-minority composition, as in other tracts (23 percent versus 12 percent). Numerous studies have found that mortgage denial rates are higher in low-income census tracts, even accounting for other loan and borrower characteristics.[16] These geographic disparities can be the result of cost factors, such as the difficulty of appraising houses in these areas because of the paucity of previous sales of comparable homes. Sales of comparable homes may also be difficult to find due to the diversity of central city neighborhoods. The small loans prevalent in low-income areas are less profitable to lenders because up-front fees to loan originators are frequently based on a percentage of the loan amount, although the costs incurred are relatively fixed. Geographic disparities in mortgage lending and the issue of mortgage redlining are discussed further in Appendix B.

3. Affordability Problems and Worst Case Housing Needs

The severe problems faced by low-income homeowners and renters are documented in HUD's ''Worst Case Housing Needs'' report. This report, which is prepared biennially for Congress, is based on the American Housing Survey (AHS), conducted every two years by the Census Bureau for HUD. The latest report analyzes data from the 1995 AHS and focuses on the housing problems faced by low-income renters, but some data is also presented on families living in owner-occupied housing. In introducing a recent HUD report, Secretary Cuomo noted that it found ''clear and compelling evidence of deep and persistent housing problems for Americans with the lowest incomes.''[17]

The ''Worst Cases'' report measures three types of problems faced by homeowners and renters:

(i) Cost or rent burdens, where housing costs or rent exceed 50 percent of income (a ''severe burden'') or range from 31 percent to 50 percent of income (a ''moderate burden'');

(ii) The presence of physical problems involving plumbing, heating, maintenance, hallway, or the electrical system, which may lead to a classification of a residence as ''severely inadequate'' or ''moderately inadequate;'' and

(iii) Crowded housing, where there is more than one person per room in a residence.

The study reveals that in 1995, 5.3 million households had ''worst case'' housing needs, defined as housing costs greater than 50 percent of household income or severely inadequate housing among unassisted households. A preliminary HUD analysis of 1997 AHS data indicates that worst case needs have remained at or near this level.[18]

a. Problems Faced by Owners

Of the 63.5 million owner households in 1995, 4.9 million (8 percent) confronted a severe cost burden and another 8.1 million (13 percent) faced a moderate cost burden. There were 1.2 million households with severe physical problems and 0.9 million which were overcrowded. The report found that 25 percent of American homeowners faced at least one severe or moderate problem.

Not surprisingly, problems were most common among very low-income owners.[19] Nearly a third of these households faced a severe cost burden, and an additional 22 percent faced a moderate cost burden. And nearly 10 percent of these families lived in severely or moderately inadequate housing, while 3 percent faced overcrowding. Only 40 percent of very low-income owners reported no problems.

Over time the percentage of owners faced with severe or moderate physical problems has decreased, as has the portion living in overcrowded conditions. However, affordability problems have grown—the shares facing severe (moderate) cost burdens were only 3 percent (5 percent) in 1978, but rose to 5 percent (11 percent) in 1989 and 8 percent (13 percent) in 1995. The increase in affordability problems apparently reflects a rise in mortgage debt in the late 1980s and early 1990s, from 21 percent of homeowners' equity in 1983 to 36 percent in 1995.[20] As a result of the increased incidence of severe and moderate cost burdens, the share of owners reporting no problems fell from 84 percent in 1978 to 78 percent in 1989 and 75 percent in 1995.

b. Problems Faced by Renters

Problems of all three types listed above are more common among renters than among homeowners. In 1995 there were 6.2 million renter households (18 percent of all renters) who paid more than 50 percent of their income for rent.[21] Another 8 million faced a moderate rent burden, thus in total 40 percent of renters paid more than 30 percent of their income for rent.

Among very low-income renters, 70 percent faced an affordability problem, including 41 percent who paid more than half of their income in rent. More than one-third of renters with incomes between 51 percent and 80 percent of area median family income also paid more than 30 percent of their income for rent.

Affordability problems have increased over time among renters. The shares of renters with severe (moderate) rent burdens rose from 14 percent (18 percent) in 1978 to 15 percent (21 percent) in 1989 and 18 percent (22 percent) in 1995.

The share of families living in inadequate housing in 1995 was higher for renters (9 percent) than for owners (5 percent), as was the share living in overcrowded housing (5 percent for renters, but only 1 percent for owners). Crowding and inadequate housing were more common among lower-income renters, but among even the lowest income group, affordability was the dominant problem. The prevalence of inadequate and crowded rental housing has diminished over time, while affordability problems have grown.

Other problems faced by renters discussed in the ''Worst Cases'' report include the loss between 1993 and 1995 of 900,000 rental units affordable to very low-income families, the increase in ''worst case needs'' among working families between 1991 and 1995, and the shortage of units affordable to very low-income households (especially in the West).

The ''Worst Cases'' report presented analysis of 20-year trends in affordable housing units up through 1995, showing a steady decline in the number of such units. A recently-released HUD analysis of housing vacancy survey data reveals that this trend has continued since 1995, and that in the two years from 1996 to 1998 the number of units that rent for less than $300 (inflation-adjusted) declined by 19 percent.[22] The same study reports the median asking rent for new rental units as $726, or beyond the affordable range.

HUD's recent study on market trends includes also an analysis of trends in the Consumer Price Index from 1996 to 1998.[23] During this two-year period the price index for all items grew by 3.9 percent, but the price index for residential rent rose 6.2 percent. The same report also cites Bureau of Labor Statistics data showing that rents slightly outpaced income between 1995 and 1997 for the 20 percent of U.S. households with the lowest incomes. The report concludes that low-income renters are continuing to face an affordability crisis.

4. Other National Housing Needs

In addition to the broad housing needs discussed above, there are additional needs confronting specific sectors of the housing and mortgage markets. This section presents a brief discussion of three such areas and the roles that the GSEs play or might play in addressing the needs in these areas. Other

[15] Section 3.b of this appendix provides a further discussion of automated underwriting.

[16] Robert B. Avery, Patricia E. Beeson and Mark E. Sniderman. *Understanding Mortgage Markets: Evidence from HMDA,* Working Paper Series 94–21. Federal Reserve Bank of Cleveland (December 1994).

[17] *Rental Housing Assistance—The Crisis Continues: The 1997 Report to Congress on Worst Case Housing Needs,* Department of Housing and Urban Development, Office of Policy Development and Research, (April 1998), p. i. All statistics in this subsection are taken from this report, except as noted.

[18] U.S. Department of Housing and Urban Development. *Waiting in Vain: Update on America's Rental Housing Crisis.* (March, 1999), section I.

[19] Very low-income households are defined in the report as those whose income, adjusted for family size, is less than 50 percent of area median income. This differs from the definition adopted by Congress in the GSE Act of 1992, which uses a cutoff of 60 percent and which does not adjust income for family size for owner-occupied dwelling units.

[20] Edward N. Wolff, ''Recent Trends in the Size Distribution of Household Wealth,'' *The Journal of Economic Perspectives,* 12(3), (Summer 1998), p. 137.

[21] Rent is measured in this report as gross rent, defined as contract rent plus the cost of any utilities which are not included in contract rent.

[22] ''Waiting in Vain'' (cited above), section III.2.

[23] *Ibid.,* section III.1.

needs are discussed throughout these appendices.

a. Single-family Rental Housing

The 1995 American Housing Survey (AHS) reported that 43 percent of all rental housing units are located in ''multifamily'' properties—*i.e.,* properties that contain 5 or more rental units. The bulk (57 percent) of rental units are found in the ''mom and pop shops'' of the rental market—''single-family'' rental properties, containing 1–4 units. These small properties are largely individually-owned and managed, and in many cases the owner-managers live in one of the units in the property. They include many properties in older cities, such as the duplexes in Baltimore and the triple-deckers in Boston. A number of these single-family rental properties are in need of financing for rehabilitation, discussed in the next subsection.

Single-family rental units play an especially important role in lower-income housing. The 1995 AHS found that 57 percent of such units were affordable to very low-income families—exceeding the corresponding share of 49 percent for multifamily units. These units also play a significant role in the GSEs' performance on the housing goals, since 34 percent of the single-family rental units financed by the GSEs in 1997 were affordable to very low-income families.

There is not, however, a strong secondary market for single-family rental mortgages. While single-family rental properties comprise a large segment of the rental stock for lower-income families, they make up a small portion of the GSEs' business. In 1997 the GSEs purchased $11.6 billion in mortgages for such properties, but this represented only 4 percent of the total dollar volume of each enterprise's 1997 business and only 7 percent of total single-family units financed by each GSE. With regard to their credit market share, HUD estimates that the GSEs have financed only about 13 percent of all single-family rental units that received financing in 1997, well below the GSEs' estimated market share of 49 percent for single-family owner properties.

Given the large size of this market, the high percentage of these units which qualify for the GSEs' housing goals, and the weakness of the secondary market for mortgages on these properties, an enhanced presence by Fannie Mae and Freddie Mac in the single-family rental mortgage market would seem warranted.[24]

b. Rehabilitation Problems of Older Areas

A major problem facing lower-income households is that low-cost housing units continue to disappear from the existing housing stock. Older properties are in need of upgrading and rehabilitation. These aging properties are concentrated in central cities and older inner suburbs, and they include not only detached single-family homes, but also small multifamily properties that have begun to deteriorate.

The ability of the nation to maintain the quality and availability of the existing affordable housing stock and to stabilize the neighborhoods where it is found depends on an adequate supply of credit to rehabilitate and repair older units. But obtaining the funds to fix up older properties can be difficult. The owners of small rental properties in need of rehabilitation may be unsophisticated in obtaining financing. The properties are often occupied, and this can complicate the rehabilitation process. Lenders may be reluctant to extend credit because of a sometimes-inaccurate perception of high credit risk involved in such loans.

The GSEs and other market participants have recently begun to pay more attention to these needs for financing of affordable rental housing rehabilitation.[25] However, extra effort is required, due to the complexities of rehabilitation financing, as there is still a need to do more.

c. Small Multifamily Properties

There is evidence that small multifamily properties with 5–50 units have been adversely affected by differentials in the cost of mortgage financing relative to larger properties.[26] While mortgage loans can generally be obtained for most properties, the financing that is available is relatively expensive, with interest rates as much as 150 basis points higher than those on standard multifamily loans. Loan products are characterized by shorter terms and adjustable interest rates. Borrowers typically incur costs for origination and placement fees, environmental reviews, architectural certifications (on new construction or substantial rehabilitation projects), inspections, attorney opinions and certifications, credit reviews, appraisals, and market surveys.[27] Because of a large fixed element, these costs are usually not scaled according to the mortgage loan amount or number of dwelling units in a property and consequently are often prohibitively high on smaller projects.

d. Other Needs

Further discussions of other housing needs and mortgage market problems are provided in the following sections on economic, housing, and demographic conditions. In the single-family area, for example, an important trend has been the growth of the subprime market and the GSEs' participation in the A-minus portion of that market. Manufactured housing finance and rural housing finance are areas that could be served more efficiently with an enhanced secondary market presence. In the multifamily area, properties in need of rehabilitation represent a market segment where financing has sometimes been difficult. Other housing needs and mortgage market problems are also discussed.

C. Factor 2: Economic, Housing, and Demographic Conditions: Single-Family Mortgage Market

This section discusses economic, housing, and demographic conditions that affect the single-family mortgage market. After a review of housing trends and underlying demographic conditions that influence homeownership, the discussion focuses on specific issues related to the single-family owner mortgage market. This subsection includes descriptions of recent market interest rate trends, homebuyer characteristics, and the state of affordable lending. Section D follows with a discussion of the economic, housing, and demographic conditions affecting the multifamily mortgage market.

1. Recent Trends in the Housing Market

Solid economic growth, low interest rates, price stability, and the lowest unemployment rate since 1969 combined to make 1998 a very strong year for the housing market. The employment-population ratio reached a record 64.1 percent last year, and a broad measure of labor market distress, combining the number of unemployed and the duration of unemployment, was down by 47 percent from its 1992 peak.[28] Rising real wages, a strong stock market, and higher home prices all contributed to a continuation of the rise in net household worth, following an estimated $4 trillion gain in 1997, contributing to the strong demand for housing.[29]

Homeownership Rate. In 1980, 65.6 percent of Americans owned their own home, but due to the unsettled economic conditions of the 1980s, this share fell to 63.8 percent by 1989. Major gains in ownership have occurred over the last few years, with the homeownership rate reaching a record level of 66.3 percent in 1998, when the number of households owning their own home was 9 million greater than in 1989.

[24] A detailed discussion of the GSE's activities in this area is contained in Theresa R. Diventi, *The GSE's Purchases of Single-Family Rental Property Mortgages,* Housing Finance Working Paper No. HF–004, Office of Policy Development and Research, Department of Housing and Urban Development, (March 1998).

[25] One program that shows promise is Fannie Mae's HomeStyle Home IMprovement Mortgage Loan Product. Under this program, Fannie Mae will purchase mortgages that finance the purchase and rehabilitation of 1- to 4-unit properties in ''as-is'' condition. The mortgage amount is limited to 90 percent of the appraised ''as completed'' value, with the rehab amount not to exceed 50 percent of this value.

[26] See Drew Schneider and James Follain, ''A New Initiative in the Federal Housing Administration's Office of Multifamily Housing Programs: An Assessment of Small Projects Processing,'' *Cityscape: A Journal of Policy Development and Research* 4(1), (1998), pp. 43–58; and William Segal and Christopher Herbert, *Segmentation of the Multifamily Mortgage Market: The Case of Small Properties,* paper presented to annual meetings of the American Real Estate and Urban Economics Association, (January 2000).

[27] These costs have been estimated at $30,000 for a typical transaction. Presentation by Jeff Stern, Vice President, Enterprise Mortgage Investments, HUD GSE Working Group, July 23, 1998. The most comprehensive account of the multifamily housing finance system as it relates to small properties is contained in Schneider and Follain (see above reference).

[28] This measure is discussed in Paul B. Manchester, ''A New Measure of Labor Market Distress,'' *Challenge,* (November/December 1982).

[29] Office of Federal Housing Enterprise Oversight, *1998 Report to Congress,* (June 1998), p. 28.

Gains in homeownership have been widespread over the last four years.[30] As a result, the homeownership rate rose from:

(i) 42.0 percent in 1993 to 46.1 percent in 1998 for African American households,

(ii) 39.4 percent in 1993 to 44.7 percent in 1998 for Hispanic households,

(iii) 73.7 percent in 1993 to 77.3 percent in 1998 for married couples with children,

(iv) 65.1 percent in 1993 to 66.9 percent in 1998 for household heads aged 35–44, and

(v) 48.9 percent in 1993 to 50.0 percent in 1998 for central city residents.

However, as these figures demonstrate, sizable gaps in homeownership remain—gaps which must be reduced if President Clinton's National Housing Strategy's goal of a homeownership rate of 67.5 percent by the year 2000 is to be met.

Sales of New and Existing Homes.[31] New home sales rose at a rate of 10 percent per year between 1991 and 1998 and exceeded the previous record level (set in 1977) by eight percent in 1998. The market for new homes has been strong throughout the nation, with record sales in the South and Midwest during 1998. New home sales in the Northeast and West, while strong, are running below the peak levels attained during their strong job markets of the mid-1980s and late-1970s, respectively.

The National Association of Realtors reported that 4.8 million existing homes were sold in 1998, overturning the old record set in 1997 by nearly 14 percent. The combined new and existing home sales also set a record of 5.7 million last year. Since existing homes account for more than 80 percent of the total market and sales of existing homes are strong throughout the country, combined sales reach record levels in three of the four major regions of the nation and came within 99 percent of the record in the Northeast.

One of the strongest sectors of the housing market in recent years has been shipments of manufactured homes, which more than doubled between 1991 and 1996, and leveled off at the 1996 record level during 1997 before rising slightly to 373,000 in 1998. Over two-thirds of manufactured home placements were in the South, where they comprised more than one-third of total new homes sold in 1998.

Economy/Housing Market Prospects. As noted above, the U.S. economy is coming off several years of economic expansion accompanied by low interest rates and high housing affordability. In fact, 1998 was a record year for the housing market. This leads to an important issue, what are the future prospects for the housing market?

While the housing market is expected to slow down over the next four years, the sales of existing homes during 1999 are on a record breaking pace of over five million single-family units.[32] Between 2000 and 2003, existing single-family home sales are expected to average 4.4 million units. In addition to existing home sales, housing starts are expected to average 1.5 million units over the same period. Housing should remain affordable, as indicated by out-of-pocket costs as a share of disposable income, which is expected to continue its downward trend through 2003, dipping below 25 percent. According to Standard & Poor's/DRI, mortgage interest rates are expected to average 7.1 percent over the next four years for a 30-year fixed rate mortgage.

The Congressional Budget Office (CBO)[33] projects that real Gross Domestic Product will grow at an average rate of 2.4 percent through 2003, down somewhat from the expected 4.0 percent growth rate during 1999. The ten-year Treasury rate is projected to average 5.6 percent between 2000 and 2003. Inflation, as measured by the Consumer Price Index (CPI) is projected to remain modest during the same period, averaging 2.5 percent. The unemployment rate is expected to remain low over the next four years, ranging between 4.6 and 5.1 percent. CBO expects housing starts to average 1.6 million units between 2000 and 2003, slightly off the 1999 level.

Certain risks exist, however, which could undermine the well-being of the economy. The probability of a recession still exists for the next couple of years. Under a pessimistic scenario (10 percent probability), Standard & Poor's DRI predicts that housing starts could fall during 2000, but by the end of the year, the economy would be well on its way to recovery with housing starts increasing steadily.[34] An alternate scenario has a recession arriving in 2002 (which DRI predicts with a probability of 30 percent). Under this scenario, housing starts would fall, but rebound strongly, along with the economy, in 2003.[35]

2. Underlying Demographic Conditions

Over the next 20 years, the U.S. population is expected to grow by an average of 2.4 million per year. This will likely result in 1.1 to 1.2 million new households per year, creating a continuing need for additional housing.[36] This section discusses important demographic trends behind these overall numbers that will likely affect housing demand in the future. These demographic forces include the baby-boom, baby-bust and echo baby-boom cycles; immigration trends; ''trade-up buyers;'' non-traditional and single households; and the growing income inequality between people with different levels of education.

As explained below, the role of traditional first-time homebuyers, 25-to-34 year-old married couples, in the housing market will be smaller in the next decade due to the aging of the baby-boom population. However, growing demand from immigrants and non-traditional homebuyers will likely fill in the void. The echo baby-boom (that is, children of the baby-boomers) will also add to housing demand later in the next decade. Finally, the growing income inequality between people with and without a post-secondary education will continue to affect the housing market.

The Baby-Boom Effect. The demand for housing during the 1980s and 1990s was driven, in large part, by the coming of homebuying age of the baby-boom generation, those born between 1945 and 1964. Homeownership rates for the oldest of the baby-boom generation, those born in the 1940s, rival those of the generation born in the 1930s. Due to significant house price appreciation in the late-1970s and 1980s, older baby-boomers have seen significant gains in their home equity and subsequently have been able to afford larger, more expensive homes. Circumstances were not so favorable for the middle baby-boomers. Housing was not very affordable during the 1980s, their peak homebuying age period. As a result, the homeownership rate, as well as wealth accumulation, for the group of people born in the 1950s lags that of the generations before them.[37]

As the youngest of the baby-boomers, those born in the 1960s, reached their peak homebuying years in the 1990s, housing became more affordable. While this cohort has achieved a homeownership rate equal to the middle baby-boomers, they live in larger, more expensive homes. As the baby-boom generation ages, demand for housing from this group is expected to wind down.[38]

The baby boom generation was followed by the baby bust generation, from 1965 through 1977. Since this population cohort is smaller than that of the baby boom generation, it is expected to lead to reduced housing demand during the next decade, though, as discussed below, other factors have kept the housing market very strong in the 1990s. However, the echo baby-boom generation (the children of the baby-boomers, who were born after 1977), while smaller than the baby-boom generation, will reach peak homebuying age later in the first decade of the new millennium, softening the blow somewhat.[39]

Immigrant Homebuyers. Past, present, and future immigration will also help keep homeownership growth at a respectable level. During the 1980s, 6 million legal immigrants entered the United States, compared with 4.2 million during the 1970s and 3.2 million during the 1960s.[40] As a result, the foreign-born population of the United States doubled from 9.6 million in 1970 to 19.8 million in 1990, and is expected

[30] Homeownership rates prior to 1993 are not strictly comparable with those beginning in 1993 because of a change in weights from the 1980 Census to the 1990 Census.

[31] All of the home sales data in this section are obtained from *U.S. Housing Market Conditions, 2nd Quarter 1999,* U.S. Department of Housing and Urban Development, (August 1999).

[32] Existing home sales, housing starts, housing affordability and 30-year fixed rate mortgage rate forecasts are obtained from Standard & Poor's DRI, *The U.S. Economy.* (September 1999), pp. 53–5.

[33] Real GDP, unemployment, inflation, and treasury note interest rate projects are obtained for fiscal years 2000–2009 from *The Economic and Budget Outlook: An Update,* Washington DC: Congressional Budget Office, (July 1, 1999).

[34] Standard & Poor's DRI, *The U.S. Economy.* (September 1999), p. 54.

[35] Standard & Poor's DRI, *The U.S. Economy.* (September 1999), p. 54.

[36] National Association of Realtors. *Housing Market Will Change in New Millennium as Population Shifts.* (November 7, 1998).

[37] Joint Center for Housing Studies of Harvard University. *State of the Nation's Housing 1998.* (1998), p. 14.

[38] Joint Center for Housing Studies of Harvard University. (1998), p. 15.

[39] National Association of Realtors. *Housing Market Will Change in New Millennium As Population Shifts.* (November 7, 1998).

[40] Joint Center for Housing Studies of Harvard University. (1998).

to reach 31 million by 2010.[41] While immigrants tend to rent their first homes upon arriving in the United States, homeownership rates are substantially higher among those that have lived here for at least 6 years. In 1996, the homeownership rate for recent immigrants was 14.7 percent while it was 67.4 percent for native-born households. For foreign-born naturalized citizens, the homeownership rate after six years was a remarkable 66.9 percent.[42]

Immigration is projected to add even more new Americans in the 1990s, which will help offset declines in the demand for housing caused by the aging of the baby-boom generation. While it is projected that immigrants will account for less than four percent of all households in 2010, without the increase in the number of immigrants, household growth would be 25 percent lower over the next 15 years. As a result of the continued influx of immigrants and the aging of the domestic population, household growth over the next decade should remain at or near its current pace of 1.1–1.2 million new households per year, even though population growth is slowing. If this high rate of foreign immigration continues, it is possible that first-time homebuyers will make up as much as half of the home purchasing market over the next several years.[43]

Past and future immigration will lead to increasing racial and ethnic diversity, especially among the young adult population. As immigrant minorities account for a growing share of first-time homebuyers in many markets, HUD and others will have to intensify their focus on removing discrimination from the housing and mortgage finance systems. The need to meet nontraditional credit needs, respond to diverse housing preferences, and overcome the information barriers that many immigrants face will take on added importance.

Trade-up Buyers. The fastest growing demographic group in the early part of the next millennium will be 45- to 65-year olds. This will translate into a strong demand for upscale housing and second homes. The greater equity resulting from recent increases in home prices should also lead to a larger role for ''trade-up buyers'' in the housing market during the next 10 to 15 years.

Nontraditional and Single Homebuyers. While overall growth in new households has slowed down, nontraditional households have become more important in the homebuyer market. With later marriages and more divorces, single-person and single-parent households have increased rapidly. First-time buyers include a record number of never-married single households, although their ownership rates still lag those of married couple households. According to the Chicago Title and Trust's Home Buyers Surveys, the share of first-time homebuyers who were never-married singles rose from 21 percent in 1991 to 37 percent in 1996, and to a record 43 percent in 1997. The shares for divorced/separated and widowed first-time homebuyers have stayed constant over the period, at eight percent and one percent, respectively.[44] The National Association of Realtors reports that ''single individuals, unmarried couples and minorities are entering the market as first-time buyers in record numbers.''[45] With the increase in single person households, it is expected that there will be a greater need for apartments, condominiums and townhomes.

Due to weak house price appreciation, traditional ''trade-up buyers'' stayed out of the market during the early 1990s. Their absence may explain, in part, the large representation of nontraditional homebuyers during that period. Single-parent households are also expected to decline as the baby-boom generation ages out of the childbearing years. For these reasons, nontraditional homebuyers may account for a smaller share of the housing market in the future.

Growing Income Inequality. The Census Bureau recently reported that the top 5 percent of American households received 21.7 percent of aggregate household income in 1997, up sharply from 16.1 percent in 1977. The share accruing to the lowest 80 percent of households fell accordingly, from 56.5 percent in 1977 to 50.7 percent in 1997. The share of aggregate income accruing to households between the 80th and 95th percentiles of the income distribution was virtually unchanged over this period.[46]

The increase in income inequality over the past two decades has been especially significant between those with and those without post-secondary education. The Census Bureau reports that by 1997, the mean income of householders with a high school education (or less) was less than half that for householders with a bachelor's degree (or more). According to the Joint Center for Housing Studies, inflation-adjusted median earnings of men aged 25 to 34 with only a high-school education decreased by 14 percent between 1989 and 1995.[47] So, while homeownership is highly affordable, this cohort lacks the financial resources to take advantage of the opportunity. As discussed earlier, the days of the well-paying unionized factory job have passed. They have given way to technological change that favors white-collar jobs requiring college degrees, and wages in the manufacturing jobs that remain are experiencing downward pressures from economic globalization. The effect of this is that workers without the benefit of a post-secondary education find their demand for housing constrained.

3. Single-Family Owner Mortgage Market

The mortgage market has undergone a great deal of growth and change over the past few years. Low interest rates, modest increases in home prices, and growth in real household income have increased the affordability of housing and resulted in a mortgage market boom. Total originations of single-family loans increased from $458 billion in 1990 to $859 billion in 1997 and then jumped to $1.507 trillion during the heavy refinancing year of 1998.[48] There has also been many changes in the structure and operation of the mortgage market. Innovations in lending products, added flexibility in underwriting guidelines, the development of automated underwriting systems and the rise of the subprime market, have had impacts on both the overall market and affordable lending during the 1990s.

The section starts with a review of trends in the market for mortgages on single-family owner-occupied housing. Next, trends in affordable lending, including new initiatives and changes to underwriting guidelines and the prospects for potential homebuyers are discussed. The section concludes with a summary of the activity of the GSEs relative to originations in the primary mortgage market.

a. Basic Trends in the Mortgage Market

Interest Rate Trends. The high and volatile mortgage rates of the 1980s and early 1990s have given way to a period with much lower and more stable rates in the last six years. Interest rates on mortgages for new homes were above 12 percent as the 1980s began and quickly rose to more than 15 percent.[49] After 1982, they drifted downward slowly to the 9 percent range in 1987–88, before rising back into double-digits in 1989–90. Rates then dropped by about one percentage point a year for three years, reaching a low of 6.8 percent in October-November 1993 and averaging 7.2 percent for the year as a whole.

Mortgage rates turned upward in 1994, peaking at 8.3 percent in early 1995, but fell to the 7.5 percent–7.9 percent range for most of 1996 and 1997. However, rates began another descent in late-1997 and averaged 6.95 percent for 30-year fixed rate conventional mortgages during 1998, the lowest level since 1968.[50]

Other Loan Terms. When mortgage rates are low, most homebuyers prefer to lock in a fixed-rate mortgage (FRM). Adjustable-rate

[41] John R. Pitkin and Patrick A. Simmons. ''The Foreign-Born Population to 2010: A Prospective Analysis by Country of Birth, Age, and Duration of U.S. Residence,'' *Journal of Housing Research.* 7(1) (1996), pp. 1–31.

[42] Fred Flick and Kate Anderson. ''Future of Housing Demand: Special Markets,'' *Real Estate Outlook.* (1998), p. 6.

[43] Mark A. Calabria. ''The Changing Picture of Homebuyers,'' *Real Estate Outlook.* (May 1999), p. 10.

[44] Chicago Title and Trust Family of Insurers, *Who's Buying Homes in America.* (1998).

[45] Calabria. (May 1999), p. 11.

[46] Bureau of the Census, ''Money Income in the United States: 1997,'' *Current Population Report P60–200,* (September 1998).

[47] Joint Center for Housing Studies of Harvard University. *State of the Nation's Housing 1998.* (1998).

[48] Data for 1990–97 from *U.S. Housing Market Conditions, 1st Quarter 1999,* U.S. Department of Housing and Urban Development, (May 1999), Table 17; 1998 from the Mortgage Bankers Association.

[49] Interest rates in this section are effective rates paid on conventional home purchase mortgages on new homes, based on the Monthly Interest Rate Survey (MIRS) conducted by the Federal Housing Finance Board and published by the Council of Economic Advisers annually in the *Economic Report of the President* and monthly in *Economic Indicators.* These are average rates for all loan types, encompassing 30-year and 15-year fixed-rate mortgages and adjustable rate mortgages.

[50] *U.S. Housing Market Conditions, 2nd Quarter 1999,* (August 1999), Table 12.

mortgages (ARMs) are more attractive when rates are high, because they carry lower rates than FRMs and because buyers may hope to refinance to a FRM when mortgage rates decline. Thus the Federal Housing Finance Board (FHFB) reports that the ARM share of the market jumped from 20 percent in the low-rate market of 1993 to 39 percent when rates rose in 1994.[51] The ARM share has since trended downward, falling to 22 percent in 1997 and a record low of 12 percent in 1998.

In 1997 the term-to-maturity was 30 years for 83 percent of conventional home purchase mortgages. Other maturities included 15 years (11 percent of mortgages), 20 years (2 percent), and 25 years (1 percent). The average term was 27.5 years, up slightly from 26.9 years in 1996, but within the narrow range of 25–28 years which has prevailed since 1975.

One dimension of the mortgage market which has changed in recent years is the increased popularity of low- or no-point mortgages. FHFB reports that average initial fees and charges (''points'') have decreased from 2.5 percent of loan balance in the mid-1980s to 2 percent in the late-1980s, 1.5 percent in the early 1990s, and less than 1.0 percent in 1995–97. Last year 21 percent of all loans were no-point mortgages. These lower transactions costs have increased the propensity of homeowners to refinance their mortgages.[52]

Another recent major change in the conventional mortgage market has been the proliferation of high loan-to-value ratio (LTV) mortgages. Loans with LTVs greater than 90 percent (that is, down payments of less than 10 percent) made up less than 10 percent of the market in 1989–91, but 25 percent of the market in 1994–97. Loans with LTVs less than or equal to 80 percent fell from three-quarters of the market in 1989–91 to an average of 56 percent of mortgages originated in 1994–97. As a result, the average LTV rose from 75 percent in 1989–91 to nearly 80 percent in 1994–97.[53]

The statistics cited above pertain only to home purchase mortgages. Refinance mortgages generally have shorter terms and lower loan-to-value ratios than home purchase mortgages.

Mortgage Originations: Refinance Mortgages. Mortgage rates affect the volume of both home purchase mortgages and mortgages used to refinance an existing mortgage. The effects of mortgage rates on the volume of home purchase mortgages are felt through their role in determining housing affordability, discussed in the next subsection. However, the largest impact of rate swings on single-family mortgage originations is reflected in the volume of refinancings.

During 1992–93, homeowners responded to the lowest rates in 25 years by refinancing existing mortgages. In 1989–90 interest rates exceeded 10 percent, and refinancings accounted for less than 25 percent of total mortgage originations.[54] The subsequent sharp decline in mortgage rates drove the refinance share over 50 percent in 1992 and 1993 and propelled total single-family originations to more than $1 trillion in 1993—twice the level attained just three years earlier.

The refinance wave subsided after 1993, because most homeowners who found it beneficial to refinance had already done so and because mortgage rates rose once again.[55] Total single-family mortgage originations bottomed out at $639 billion in 1995, when the refinance share was only 15 percent. This meant that refinance volume declined by more than 80 percent in just two years.

A second surge in refinancings began in late-1997, abated somewhat in early 1998, but regained momentum in June 1998. The refinance share rose above 30 percent in mid-1997, exceeded 40 percent in late-1997, and peaked at 64 percent in January, before falling to 40 percent by May 1998. This share increased steadily over the June-September 1998 period, and averaged 50 percent for 1998. Total originations, driven by the volume of refinancings, amounted to $859 billion in 1997 and were $1.507 trillion in 1998, nearly 50 percent higher than the previous record level of $1.02 trillion attained in 1993. Total refinance mortgage volume in 1998 was estimated to be nearly 10 times the level attained in 1995. The 1997–98 refinance wave reflects other factors besides interest rates, including greater borrower awareness of the benefits of refinancing, a highly competitive mortgage market, and the enhanced ability of the mortgage industry (including the GSEs), utilizing automated underwriting and mortgage origination systems, to handle this unprecedented volume expeditiously.

Mortgage Originations: Home Purchase Mortgages. In 1972 the median price of existing homes in the United States was $27,000 and mortgage rates averaged 7.52 percent; thus with a 20 percent down payment, a family needed an income of $7,200 to qualify for a loan on a median-priced home. Actual median family income was $11,100, exceeding qualifying income by 55 percent. The National Association of Realtors (NAR) has developed a housing affordability index, calculated as the ratio of median income to qualifying income, which was 155 in 1972.

By 1982 NAR's affordability index had plummeted to 70, reflecting a 154 percent increase in home prices and a doubling of mortgage rates over the decade. That is, qualifying income rose by nearly 400 percent, to $33,700, while median family income barely doubled, to $23,400. With so many families priced out of the market, single-family mortgage originations amounted to only $97 billion in 1982.

Declining interest rates and the moderation of inflation in home prices have led to a dramatic turnaround in housing affordability in the last decade and a half. Remarkably, qualifying income in 1993 was $27,700 in 1993—$6,000 less than it had been in 1982. Median family income reached $37,000 in 1993, thus the NAR's housing affordability index reached 133, reflecting the most affordable housing in 20 years. Housing affordability has remained at about 130 since 1993, with home price increases and somewhat higher mortgage rates in 1994–97 being offset by gains in median family income.[56]

The high affordability of housing, low unemployment, and high consumer confidence meant that home purchase mortgages reached a record level in 1997. However, this record was surpassed in 1998, as a July 1998 survey by Fannie Mae found that ''every single previously cited barrier to homeownership—from not having enough money for a down payment, to not having sufficient information about how to buy a home, to the confidence one has in his job, to discrimination or social barriers—has collapsed to the lowest level recorded in the seven years Fannie Mae has sponsored its annual National Housing Survey.''[57] Specifically, the Mortgage Bankers Association estimates that home purchase mortgages rose to about $750 billion in 1998, well above the previous record of $576 billion established in 1997.

First-time Homebuyers. First-time homebuyers have been the driving force in the recovery of the nation's housing market over the past several years. First-time homebuyers are typically people in the 25–34 year-old age group that purchase modestly priced houses. As the post-World War II baby boom generation ages, the percentage of Americans in this age group decreased from 28.3 percent in 1980 to 25.4 percent in 1992.[58] Even though this cohort is smaller, first-time homebuyers increased their share of home sales. First-time buyers accounted for about 47 percent of home sales in 1997. Participation rates for first-time homebuyers so far this decade are all in excess of 45 percent. This follows participation rates that averaged 40 percent in the 1980s, including a low of 36 percent in 1985. The highest first-

[51] *All statistics in this section are taken from the Federal Housing Finance Board's MIRS.*

[52] This is discussed in more detail in Paul Bennett, Richard Peach, and Stavros Peristani, *Structural Change in the Mortgage Market and the Propensity to Refinance,* Staff Report Number 45, Federal Reserve Bank of New York, (September 1998).

[53] Other sources of data on loan-to-value ratios such as the American Housing Survey and the Chicago Title and Trust Company indicated that high-LTV mortgages are somewhat more common in the primary market than the Finance Board's survey. However, the Chicago Title survey does not separate FHA-insured loans from conventional mortgages.

[54] Refinancing data is taken from Freddie Mac's monthly *Primary Mortgage Market Survey.*

[55] There is some evidence that lower-income borrowers did not participate in the 1993 refinance boom as much as higher-income borrowers—see Paul B. Manchester, *Characteristics of Mortgages Purchased by Fannie Mae and Freddie Mac: 1996–97 Update,* Housing Finance Working Paper No. HF–006, Office of Policy Development and Research, Department of Housing and Urban Development, (August 1998), pp. 30–32.

[56] Housing affordability varies markedly between regions, ranging in May 1998 from 164 in the Midwest to 100 in the West, with the South and Northeast falling in between.

[57] Fannie Mae, http://www.fanniemae.com/news/housingsurvey/1998, (July 16, 1998).

[58] U.S. Department of Commerce, Bureau of the Census, *Money Income of Households, Families, and Persons in the United States: 1992,* Special Studies Series P–60, No. 184, Table B–25, (October 1993).

time homebuyer participation rate was achieved in 1977 when it was 48 percent.[59]

The Chicago Title and Trust Company reports that the average first time-buyer in 1997 was 32 years old and spent 5 months looking at 14 homes before making a purchase decision. Most such buyers are married couples, but in 1997 21 percent were never-married males and 13 percent were never-married females.

First time buyers paid an average of 35 percent of after-tax income, or $1,020 per month, on their mortgage payments in 1997, and saved for 2.2 years to accumulate a down payment. The National Association of Realtors reports that first-time buyers took out an average mortgage of $102,000 in 1997, corresponding to an LTV of 90 percent, compared with a mortgage of $132,000 and an average LTV of 84 percent for repeat buyers.

GSEs' Acquisitions as a Share of the Primary Single-Family Mortgage Market. The GSEs' single-family mortgage acquisitions have generally followed the volume of originations in the primary market for conventional mortgages, falling from 5.3 million mortgages in the record year of 1993 to 2.2 million mortgages in 1995, but rebounding to 2.9 million mortgages in 1996. In 1997, however, single-family originations were essentially unchanged, but the GSEs' acquisitions declined to 2.7 million mortgages.[60] This pattern was reversed in 1998, when originations rose by 73 percent, but the GSEs' purchases jumped to 5.8 million mortgages.

Reflecting these divergent trends, the Office of Federal Housing Enterprise Oversight (OFHEO) estimates that the GSEs' share of the conventional single-family mortgage market, measured in dollars, declined from 42 percent in 1996 to 37 percent in 1997—well below the peak of 58 percent attained in 1993.[61] OFHEO attributes the 1997 downturn in the GSEs' role to increased holdings of mortgages in portfolio by depository institutions and to increased competition with Fannie Mae and Freddie Mac by private label issuers. However, OFHEO estimates that the GSEs' share of the market rebounded sharply in 1998, to 48 percent.

Mortgage Market Prospects. The Mortgage Bankers Association (MBA) reports that 1998 was a record-breaking year, with $1.507 trillion in mortgage originations. Refinancing of existing mortgages was also up in 1998, accounting for 50 percent share of the total mortgage originations. Meanwhile, ARMs accounted for a smaller share, 12 percent, of originations than usual. The mortgage market should remain strong in 1999, but should settle down a bit in the year 2000. The MBA predicts that originations will amount to $1.29 trillion, with refinancings representing 35 percent of originations, during 1999. The MBA expects originations and refinancing activity to return to a more normal pace in 2000. ARMs are expected to account for a larger share, 23 percent in 1999 and 32 percent in 2000, of total mortgage originations.[62]

b. Affordable Lending in the Mortgage Market

In the past few years, conventional lenders, private mortgage insurers and the GSEs have begun implementing changes to extend homeownership opportunities to lower-income and historically underserved households. The industry has started offering more customized products, more flexible underwriting, and expanded outreach so that the benefits of the mortgage market can be extended to those who have not been adequately served through traditional products, underwriting, and marketing. This section summarizes recent initiatives undertaken by the industry to expand affordable housing. The section also discusses the significant role FHA plays in making affordable housing available to historically underserved groups.

Down Payments. GE Capital's 1989 Community Homebuyer Program first allowed homebuyers who completed a program of homeownership counseling to have higher than normal payment-to-income qualifying ratios, while providing less than the full 5-percent down payment from their own funds. Thus the program allowed borrowers to qualify for larger loans than would have been permitted under standard underwriting rules. Fannie Mae made this Community Homebuyer Program a part of its own offerings in 1990. Affordable Gold is a similar program introduced by Freddie Mac in 1992. Many of these programs allowed 2 percentage points of the 5-percent down payment to come from gifts from relatives or grants and unsecured loans from local governments or nonprofit organizations.

In 1994, the industry (including lenders, private mortgage insurers and the GSEs) began offering mortgage products that required down payments of only 3 percent, plus points and closing costs. Other industry efforts to reduce borrowers' up front costs have included zero-point-interest-rate mortgages and monthly insurance premiums with no up front component. These new plans eliminated large up front points and premiums normally required at closing.

During 1998, Fannie Mae introduced its ''Flexible 97'' and Freddie Mac introduced its ''Alt 97'' low down payment lending programs. Under these programs borrowers are required to put down only 3 percent of the purchase price. The down payment, as well as closing costs, can be obtained from a variety of sources, including gifts, grants or loans from a family member, the government, a non-profit agency and loans secured by life insurance policies, retirement accounts or other assets. While these programs started out slowly, by November 1998 both GSEs' programs reached volumes of $200 million per month. However, the GSEs are expected to purchase less than $4 billion in their 97 percent LTV programs by the end of 1998, well below the $75 billion of 97 percent LTV loans that FHA is expected to insure in 1998.[63]

In early 1999, Fannie Mae announced that it would introduce several changes to their mortgage insurance requirements. The planned result is to provide options for low downpayment borrowers to reduce their mortgage insurance costs. Franklin D. Raines, Fannie Mae chairman and chief executive officer stated, ''Now, thanks to our underwriting technology, our success in reducing credit losses, and innovative new arrangements with mortgage insurance companies, we can increase mortgage insurance options and pass the savings directly on to consumers.'' [64]

Partnerships. In addition to developing new affordable products, lenders and the GSEs have been entering into partnerships with local governments and nonprofit organizations to increase mortgage access to underserved borrowers. Fannie Mae's partnership offices in 33 central cities, serving to coordinate Fannie Mae's programs with local lenders and affordable housing groups, are an example of this initiative. Another example is the partnership Fannie Mae and the National Association for the Advancement of Colored People (NAACP) announced in January 1999.[65] Under this partnership, Fannie Mae will provide funding for technical assistance to expand the NAACP's capacity to provide homeownership information and counseling. It will also invest in NAACP-affiliated affordable housing development efforts and explore structures to assist the organization in leveraging its assets to secure downpayment funds for eligible borrowers. Furthermore, Fannie Mae will provide up to $110 million in special financing products, including a new $50 million underwriting experiment specifically tailored to NAACP clientele.

Freddie Mac does not have a partnership office structure similar to Fannie Mae's, but it has undertaken a number of initiatives in specific metropolitan areas. Freddie Mac also announced on January 15, 1999 that it entered into a broad initiative with the NAACP to increase minority homeownership. Through this alliance, Freddie Mac and the NAACP seek to expand community-based outreach, credit counseling and marketing efforts, and the availability of low-downpayment mortgage products with flexible underwriting guidelines. As part of the initiative, Freddie Mac has committed to purchase $500 million in mortgage loans.[66]

The above are only examples of the partnership efforts undertaken by the GSEs. There are more partnership programs than can be adequately described here. For full descriptions of Fannie Mae's and Freddie

[59] Chicago Title and Trust Family of Insurers, *Who's Buying Homes in America,* (1998).

[60] Single-family originations rose by 10 percent in dollar terms in 1997, but the Mortgage Bankers Association estimates that they fell by 0.6 percent in terms of the number of loans.

[61] Office of Federal Housing Enterprise Oversight, *1998 Report to Congress,* Figure 9, p. 32. The GSEs' market shares in terms of units financed in 1997 are shown below in Table A.7.

[62] Mortgage market projections obtained from the MBA's *MBA Mortgage Finance Forecast*, October 1999.

[63] ''After Slow Start, Fannie and Freddie Report Growing Interest in 97 Percent LTV Products,'' *Inside Mortgage Finance.* (November 20, 1998), pp. 10–11.

[64] Speech before the annual convention of the National Association of Home Builders in Dallas TX, (January 1999).

[65] Fannie Mae News Release (January 1999).

[66] Freddie Mac News Release (January 15, 1999).

Mac's partnership programs, see their respective Annual Reports.

Underwriting Flexibility. Lenders, mortgage insurers, and the GSEs have also been modifying their underwriting standards to attempt to address the needs of families who find qualifying under traditional guidelines difficult. The goal of these underwriting changes is not to loosen underwriting standards, but rather to identify creditworthiness by alternative means that more appropriately measure the circumstances of lower-income households. The changes to underwriting standards include, for example:

(i) Using a stable income standard rather than a stable job standard. This particularly benefits low-skilled applicants who have successfully remained employed, even with frequent job changes.

(ii) Using an applicant's history of rent and utility payments as a measure of creditworthiness. This measure benefits lower-income applicants who have not established a credit history.

(iii) Allowing pooling of funds for qualification purposes. This change benefits applicants with extended family members.

(iv) Making exceptions to the ''declining market'' rule and clarifying the treatment of mixed-use properties.[67] These changes benefit applicants from inner-city underserved neighborhoods.

These underwriting changes have been accompanied by homeownership counseling to ensure homeowners are ready for the responsibilities of homeownership. In addition, the industry has engaged in intensive loss mitigation to control risks.

Increase in Affordable Lending, 1993–1997.[68] Home Mortgage Disclosure Act (HMDA) data suggest that the new industry initiatives may be increasing the flow of credit to underserved borrowers. Between 1993 and 1997, conventional loans to low-income and minority families increased at much faster rates than loans to higher income and non-minority families. As shown below, over this period home purchase originations to African Americans and Hispanics grew by almost 60 percent, and purchase loans to low-income borrowers (those with incomes less than 80 percent of area median income) increased by 45 percent.

	1993–97 percent	1995–97 percent
All Borrowers	28.1	11.1
African Americans/ Hispanics	57.7	−0.2
Whites	21.9	8.9
Income Less Than 80% AMI	45.1	15.4
Income Greater Than 120% AMI	31.5	24.5

However, as also shown, in the latter part of this period conventional lending for some groups slowed significantly. Between 1995 and 1997, the slowing of the growth of home purchase originations was much greater for low-income borrowers than for higher-income borrowers. Moreover , even though remaining at near-peak levels in 1997, conventional home purchase originations to African Americans and Hispanics actually decreased by two-tenths of a percent over the past three years. It should be noted, however, that total loans (conventional plus government) originated to African-American and Hispanic borrowers increased between 1995 and 1997, but this was mainly the result of a 40.0 percent increase in FHA-insured loans originated for African-American and Hispanic borrowers.

Affordable Lending Shares by Major Market Sector. The focus of the different sectors of the mortgage market on affordable lending can be seen by examining Tables A.1a, A.1b, and A.2. Tables A.1a and A.1b present affordable lending percentages for FHA, the GSEs, depositories (banks and thrift institutions), the conventional conforming sector, and the overall market.[69] The discussion below will center on Table A.1a, which provides information on home purchase loans and thus, homeownership opportunities. Table A.1b, which provides information on total (both home purchase and refinance) loans, is included to give a complete picture of mortgage activity. Both 1997 and 1998 data are included in these tables; the year 1997 represents a more typical year of mortgage activity than 1998, which was characterized by heavy refinance activity.

The interpretation of the ''distribution of business'' percentages, reported in Table A.1a for several borrower and neighborhood characteristics, can be illustrated using the FHA percentage for low-income borrowers: during 1997, 47.5 percent of all FHA-insured home purchase loans in metropolitan areas were originated for borrowers with an income less than 80 percent of the local area median income. Table A.2, on the other hand, presents ''market share'' percentages that measure the portion of all home purchase loans for a specific affordable lending category (such as low-income borrowers) accounted for by a particular sector of the mortgage market (FHA or the GSEs). In this case, the FHA market share of 33 percent for low-income borrowers is interpreted as follows: of all home purchase loans originated in metropolitan areas during 1997, 33 percent were FHA-insured loans. Thus, this ''market share'' percentage measures the importance of FHA to the market's overall funding of loans for low-income borrowers.

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[67] Standard underwriting procedures characterize a property in a declining neighborhood as one at high risk of losing value. Implicitly, these underwriting standards presume that the real estate market is inefficient in economic terms, that is, prices do not reflect all available information.

[68] For an update of this analysis to include 1998, see Randall M. Scheessele, *1998 HMDA Highlights,* Housing Finance Working Paper HF–009, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, (October 1999).

[69] The ''overall'' market is defined as all loans (including both government and conventional) below the 1997 conforming loan limit of $214,600 and the 1998 conforming loan limit of $227,150.

Table A.1a

Affordable Lending Shares for Major Sectors of the Home Purchase Mortgage Market in Metropolitan Areas, 1997 and 1998

			Conventional Conforming Market				
Borrower Characteristics	Total Market	FHA	Freddie Mac	Fannie Mae	Both GSEs	Depositories	Total Conforming Market
Low-Income: 1997	32.0 %	47.5 %[1]	19.2 %	23.2 %	21.6 %	29.4 %	27.3 %
1998	32.3	49.1	22.4	25.6	24.3	29.9	27.8
African American: 1997	7.8	14.4	3.2	4.6	4.1	4.7	5.1
1998	7.4	14.2	3.3	4.0	3.7	4.8	4.9
Hispanic: 1997	8.7	17.8	5.1	6.3	5.8	5.1	5.9
1998	8.6	18.6	4.7	6.1	5.6	5.5	6.1
Minority: 1997	21.4	35.8	14.0	17.8	16.3	14.6	16.5
1998	21.0	36.5	13.1	16.6	15.2	15.2	16.6
Neighborhood Characteristics							
Low-Income Tract: 1997	12.8 %	19.1 %	7.9 %	9.7 %	9.0 %	12.0 %	10.9 %
1998	12.3	18.7	8.0	9.7	9.0	12.1	10.7
High-Minority Tract: 1997	17.3	27.1	11.4	15.5	13.9	12.2	14.1
1998	16.9	27.0	10.8	14.5	13.0	12.6	14.1
High African-American Tract: 1997	5.8	9.6	3.0	4.9	4.2	4.7	4.6
1998	5.5	9.2	3.2	4.1	3.8	4.7	4.5
Underserved Areas: 1997	29.1	41.3	19.9	23.8	22.3	26.3	25.2
1998	28.2	41.2	20.0	23.5	22.1	26.1	24.6

Notes: All the data are for home purchase mortgages. The FHA, depositories, and the two market percentages are derived from 1997 and 1998 HMDA data. The GSE percentages are derived from the loan-level data that Fannie Mae and Freddie Mac provide to HUD. The GSE data include all home loans purchased during 1997 and 1998; thus, these data include their purchases of seasoned loans (i.e., mortgages originated prior to 1997 or 1998) as well as their purchases of mortgages originated during 1997 and 1998. The "Total Market" combines the government sector (FHA and VA loans) and the conventional conforming market. Thus, it includes all loans except "jumbo" loans above the 1997 (1998) conforming loan limit of $214,600 ($227,150). The "Depositories" data refer to new originations that are not sold by banks and thrift institutions during 1997-1998 and thus are retained in depository portfolios. The HMDA data for low-income borrowers exclude mortgages with a loan-to-borrower-income ratio greater than six.

[1] Each percentage represents the share of a sector's portfolio accounted for by the borrower or neighborhood characteristic. For example, 47.5 percent of FHA-insured home loans were loans for low-income borrowers.

Table A.1b

Affordable Lending Shares for Major Sectors of the Home Purchase and Refinance Mortgage Market in Metropolitan Areas, 1997 and 1998

			Conventional Conforming Market				
Borrower Characteristics	Total Market	FHA	Freddie Mac	Fannie Mae	Both GSEs	Depositories	Total Conforming Market
Low-Income: 1997	31.1 %	47.1 %[1]	20.6 %	22.7 %	21.8 %	28.0 %	28.1 %
1998	28.1	48.2	21.7	22.5	22.1	26.2	25.8
African American: 1997	8.0	14.2	3.2	4.2	3.8	4.8	6.3
1998	6.5	13.7	3.0	3.2	3.1	4.4	5.0
Hispanic: 1997	7.4	17.8	4.8	5.7	5.3	4.6	5.4
1998	6.7	17.2	4.4	4.9	4.7	4.5	5.2
Minority: 1997	20.1	35.6	13.1	16.3	15.0	13.4	16.7
1998	18.0	34.8	12.2	14.0	13.2	13.1	15.3
Neighborhood Characteristics							
Low-Income Tract: 1997	13.6 %	18.9 %	8.6 %	9.6 %	9.2 %	11.9 %	12.7 %
1998	11.5	17.4	8.1	8.4	8.2	10.9	10.7
High-Minority Tract: 1997	17.8	27.5	11.8	15.1	13.8	12.2	15.9
1998	16.2	27.2	11.5	13.2	12.5	12.2	14.5
High African-American Tract: 1997	7.1	9.7	3.5	4.6	4.2	5.1	6.6
1998	5.8	9.1	3.6	3.5	3.5	4.7	5.3
Underserved Areas: 1997	30.0	41.1	21.6	23.9	22.9	26.5	27.8
1998	26.8	39.9	21.0	21.5	21.3	25.0	24.8

Notes: All the data are for home purchase and refinance mortgages. The FHA, depositories, and the two market percentages are derived from 1997 and 1998 HMDA data. The GSE percentages are derived from the loan-level data that Fannie Mae and Freddie Mac provide to HUD. The GSE data include all loans purchased during 1997 and 1998; thus, these data include their purchases of seasoned loans (i.e., mortgages originated prior to 1997 or 1998) as well as their purchases of mortgages originated during 1997 and 1998. The "Total Market" combines the government sector (FHA and VA loans) and the conventional conforming market. Thus, it includes all loans except "jumbo" loans above the 1997 (1998) conforming loan limit of $214,600 ($227,150). The "Depositories" data refer to new originations that are not sold by banks and thrift institutions during 1997-1998 and thus are retained in depository portfolios. The HMDA data for low-income borrowers exclude mortgages with a loan-to-borrower-income ratio greater than six.

[1] Each percentage represents the share of a sector's portfolio accounted for by the borrower or neighborhood characteristic. For example, 47.1 percent of FHA-insured home loans were loans for low-income borrowers. It should be noted that due to FHA's streamline refinance program, borrower income data were not available for almost 70 percent of FHA's refinance loans.

Table A.2

FHA-Insured Loans and GSE Purchases As Shares of Home Purchase Mortgages Originated in Metropolitan Areas During 1997

	FHA-Insured	GSE Purchases
Low-Income Borrowers	33% [1]	28-30%
African-American and Hispanic Borrowers	44%	24-27%
Low-Income Tracts	35%	31%
High Minority Tracts	37%	35%
Underserved Areas[2]	33%	33%
All Loans	23%	44%

Source: 1997 HMDA data and 1997 GSE data.

Notes: The FHA figures (first column) refer to percentages of all newly-mortgaged home purchase mortgage loans (except jumbo loans above the conforming loan limit of $214,600) in metropolitan areas that were FHA insured during 1997. The GSE figures (second column) are defined differently-- they include GSE purchases in metropolitan areas during 1997 of both 1997 and prior-year conventional mortgage originations. (About one-fourth of the GSEs' 1997 purchases were mortgages originated prior to 1997.) See Table A.7 for an analyis that focuses only on the GSEs' purchases of 1997 mortgage originations. The second GSE figure for the borrower income and race variables is calculated by reallocating missing GSE data for the variables. As with the FHA data, the GSE purchases are expressed as a percentage of the total market in metropolitan areas. In this table, the "total market" includes all (government and conventional) home purchase mortgages originated in metropolitan areas during 1997 that were below the conforming loan limit of $214,600. The market data reported in HMDA are adjusted upward by 10 percent, which assumes that HMDA covers 90 percent of the metropolitan mortgage market. A lower coverage assumption would increase the market totals and thus reduce the GSE and FHA market shares. Assumptions about HMDA's coverage of FHA loans were based on a comparison of FHA loans as reported by 1996 HMDA data with FHA loans as reported by FHA for 1996. Thus, an updating of this FHA coverage analysis could change the FHA market shares reported here.

[1] That is, it is estimated that FHA insured for 33 percent of all home purchase loans that were originated during 1997 and were for low-income borrowers in metropolitan areas.

[2] Metropolitan census tracts with (1) median income less than or equal to 90 percent of AMI or (2) minority concentration greater than or equal to 30 percent and tract median income less than or equal to 120 percent of AMI.

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Four main conclusions may be drawn from the data presented in Tables A.1a and A.2. First, FHA places much more emphasis on affordable lending than the other market sectors. Low-income borrowers accounted for 47.5 percent of FHA-insured loans during 1997, compared with 21.6 percent of the home loans purchased by the GSEs, 29.4 percent of home loans retained by depositories, and 27.3 percent of conventional conforming loans.[70] Likewise, 41.3 percent of FHA-insured loans were originated in underserved census tracts, while only 22.3 percent of the GSE-purchased loans and 25.2 percent of conventional conforming loans were originated in these tracts.[71] As shown in Table A.2, while FHA insured only 23 percent of all home purchase mortgages originated in metropolitan areas during 1997, it insured 33 percent of all mortgages originated in underserved areas.[72]

Second, the affordable lending shares for the conventional conforming sector are particularly low for minority borrowers and their neighborhoods. For example, African-American and Hispanic borrowers accounted for only 11.0 percent of all conventional conforming loans originated during 1997, compared with 32.2 percent of FHA-insured loans and 16.5 percent of all loans originated in the market. Within the conventional conforming sector, about 10 percent of both GSE-purchased loans and loans retained by depositories were originated for African Americans and Hispanics. Only 8.3 percent of Freddie Mac's purchases were loans for these borrowers, compared with 10.9 percent of Fannie Mae's purchases. As shown in Table A.1a, Fannie Mae purchased mortgages for minority borrowers and their neighborhoods at higher rates than these loans were originated by primary lenders in the conventional conforming market. During 1997, 17.8 percent of Fannie Mae's purchases were mortgages for minority borrowers, compared with 16.5 percent of conventional conforming loans. During 1998, 14.5 percent of Fannie Mae's purchases financed homes in high-minority census tracts, compared with 14.1 percent of conventional conforming loans. However, the minority lending performance of conventional lenders has been subject to much criticism in recent studies. These studies contend that primary lenders in the conventional market are not doing their fair share of minority lending which forces minorities, particularly African-American and Hispanic borrowers, to the more costly FHA and subprime markets.[73]

Third, the GSEs, but particularly Freddie Mac, tend to lag the conventional conforming market in funding affordable loans for low-income families and their neighborhoods. During 1997 and 1998, low-income census tracts accounted for 8.0 percent of Freddie Mac's purchases, 9.7 percent of Fannie Mae's purchases, 12.1 percent of loans retained by depositories, and 10.8 percent of all home loans originated by conventional conforming lenders. This pattern of Freddie Mac lagging all market participants holds up for all of the borrower and neighborhood categories examined in Table A.1a. One encouraging trend is the significant increase in both GSEs' purchases of low-income-borrower loans between 1997 and 1998; on the other hand, the GSE percentages for the other borrower and neighborhood categories examined in Table A.1a declined between 1997 and 1998. A more complete analysis of the GSEs' purchases of mortgages qualifying for the housing goals will be provided below in Section E.

Finally, within the conventional conforming market, depository institutions stand out as important providers of affordable lending for lower-income families and their neighborhoods (see Table A.1a).[74] Depository lenders have extensive knowledge of their communities and direct interactions with their borrowers, which may enable them to introduce flexibility into their underwriting standards without unduly increasing their credit risk. Another important factor influencing the types of loans held by depository lenders is the Community Reinvestment Act, which is discussed next.

Seasoned CRA Loans. The Community Reinvestment Act (CRA) requires depository institutions to help meet the credit needs of their communities. CRA provides an incentive for lenders to initiate affordable lending programs with underwriting flexibility.[75] CRA loans are typically made to low- and moderate-income borrowers earning less than 80 percent of median income for their area, and in moderate-income neighborhoods. They are usually smaller than typical conventional mortgages and also are likely to have a high LTV, high debt-to-income ratios, no payment reserves, and may not be carrying private mortgage insurance (PMI). Generally, at the time CRA loans are originated, many do not meet the underwriting guidelines required in order for them to be purchased by one of the GSEs. Therefore, many of the CRA loans are held in portfolio by lenders, rather than sold to Fannie Mae or Freddie Mac. On average, CRA loans in a pool have three to four years seasoning.[76]

However, because of the size, LTV and PMI characteristics of CRA loans, they have slower prepayment rates than traditional mortgages, making them attractive for securitization. CRA loan delinquencies also have very high cure rates.[77] For banks, selling CRA pools will free up capital to make new CRA loans. As a result, the CRA market segment may provide an opportunity for Fannie Mae and Freddie Mac to expand their affordable lending programs. In mid-1997, Fannie Mae launched its Community Reinvestment Act Portfolio Initiative. Under this pilot program Fannie Mae purchases seasoned CRA loans in bulk transactions taking into account track record as opposed to relying just on underwriting guidelines. By the end of 1997, Fannie Mae had financed $1 billion in CRA loans through this pilot.[78] With billions of dollars worth of CRA loans in bank portfolios the market for securitization should improve. Section D, below, presents data showing that Fannie Mae's purchases of CRA-type seasoned mortgages have increased recently. Fannie Mae also started another pilot program in 1998 where they purchase CRA loans on a flow basis, as they are originated. Results from this four-year $2 billion nationwide pilot should begin to be reflected in the 1999 production data.

c. Potential Homebuyers

While the growth in affordable lending and homeownership has been strong in recent years, attaining this Nation's housing goals will not be possible without tapping into the vast pool of potential homebuyers. The National Homeownership Strategy has set a goal of achieving a homeownership rate of 67.5 percent by the end of the year 2000. Due to the aging of the baby boomers, this rate reached an annual record of 66.3 percent in 1998, and should rise to 67 percent by 2000. Thus the Strategy's target will require an increase in homeownership above and beyond that resulting from current demographic trends.

The Urban Institute estimated in 1995 that there was a large group of potential homebuyers among the renter population who were creditworthy enough to qualify for homeownership.[79] Of 20.3 million renter households having low-or moderate-incomes, roughly 16 percent were better qualified for homeownership than half of the renter households who actually did become homeowners over the sample period. When one also considered their likelihood of

[70] The percentages reported in Table A.1a for the year 1998 are similar; in that year, low-income borrowers accounted for 49.1 percent of FHA-insured loans, 24.3 percent of GSE purchases, and 27.8 percent of mortgages originated in the conventional conforming market.

[71] FHA, which focuses on first-time homebuyers and low down payment loans, experiences higher mortgage defaults than conventional lenders and the GSEs. Still, the FHA system is actuarially sound because it charges an insurance premium that covers the higher default costs.

[72] FHA's role in the market is particularly important for African-American and Hispanic borrowers. As shown in Table A.2, FHA insured 44 percent of all 1997 home loan originations for these borrowers.

[73] See Green and Associates. *Fair Lending in Montgomery County: A Home Mortgage Lending Study,* a report prepared for the Montgomery County Human Relations Commission, (March 1998).

[74] However, as shown in Table A.1a, depository institutions resemble other conventional lenders in their relatively low level of originating loans for African-American, Hispanic and minority borrowers.

[75] For an analysis of the impact of CRA agreements signed by lending institutions, see Alex Schwartz, ''From Confrontation to Collaboration? Banks, Community Groups, and the Implementation of Community Reinvestment Agreements'', *Housing Policy Debate,* 9(3), (1998), pp. 631–662.

[76] ''With Securities Market Back on Track, Analysts Expect Surge in CRA Loan Securitization in 1999,'' *Inside MBS & ABS.* (February 19, 1999), pp. 11–12.

[77] *Inside MBS & ABS.* (February 19, 1999), p. 12.

[78] Fannie Mae. *1997 Annual Housing Activities Report,* (1998), p. 28.

[79] George Galster, Laudan Y. Aron, Peter Tatain and Keith Watson. *Estimating the Size, Characteristics, and Risk Profile of Potential Homebuyers.* Washington: The Urban Institute, (1995). Report Prepared for the Department of Housing and Urban Development.

defaulting relative to the average expected for those who actually moved into homeownership, 10.6 percent, or 2.15 million, low- and moderate-income renters were better qualified for homeownership, assuming the purchase of a home priced at or below median area home price. These results indicate the existence of a significant lower-income population of low-risk potential homebuyer households that might become homeowners with continuing outreach efforts by the mortgage industry.

Other surveys conducted by Fannie Mae indicate that renters desire to become homeowners, with 60 percent of all renters indicating in the July 1998 National Housing Survey that buying a home ranks from being a ''very important priority'' to their ''number-one priority,'' the highest level found in any of the seven National Housing Surveys dating back to 1992. Immigration is expected to be a major source of future homebuyers—Fannie Mae's 1995 National Housing Survey reported that immigrant renter household were 3 times as likely as renter households in general to list home purchase as their ''number-one priority.''

The achievement of the National Homeownership Strategy goal for homeownership in 2000 also depends on whether or not recent gains in the homeowning share of specific groups are maintained. The Joint Center for Housing Studies has pointed out that minorities account for only 17 percent of all homeowners, but were responsible for 42 percent of the 4 million increase in the number of homeowners between 1994 and 1997. Minority demand for homeownership continues to be high, as reported by the Fannie Mae Foundation's April 1998 Survey of African Americans and Hispanics. For example, 38 percent of African Americans surveyed said it is fairly to very likely that they will buy a home in the next 3 years, compared with 25 percent in 1997.[80] The survey also reports that 67 percent of African Americans and 65 percent of Hispanics cite homeownership as being a ''very important priority'' or ''number-one priority.''[81]

The Joint Center for Housing Studies has stated that if favorable economic and housing market trends continue, and if additional efforts to target mortgage lending to low-income and minority households are made, the homeownership rate could reach 70 percent by 2010.

d. Automated Mortgage Scoring

This, and the following two sections, discuss special topics that have, in recent years, impacted the primary and secondary mortgage markets. They are automated mortgage scoring, subprime loans and manufactured housing.

Automated mortgage scoring was developed as a high-tech tool with the purpose of identifying credit risks in a more efficient manner. As time and cost are reduced by the automated system, more time can be devoted by underwriters to qualifying marginal loan applicants that are referred by the automated system for more intensive review. Fannie Mae and Freddie Mac are in the forefront of new developments in automated mortgage scoring technology. Both enterprises released automated underwriting systems in 1995-Freddie Mac's Loan Prospector and Fannie Mae's Desktop Underwriter. Each system uses numerical credit scores, such as those developed by Fair, Isaac, and Company, and additional data submitted by the borrower, such as loan-to-value ratios and available assets, to calculate a mortgage score that evaluates the likelihood of a borrower defaulting on the loan. The mortgage score is in essence a recommendation to the lender to accept the application, or to refer it for further review through manual underwriting. Accepted loans benefit from reduced document requirements and expedited processing.

Along with the promise of benefits, however, automated mortgage scoring has raised concerns. These concerns are related to the possibility of disparate impact and the proprietary nature of the mortgage score inputs. The first concern is that low-income and minority homebuyers will not score well enough to be accepted by the automated underwriting system resulting in fewer getting loans. The second concern relates to the ''black box'' nature of the scoring algorithm. The scoring algorithm is proprietary and therefore it is difficult, if not impossible, for applicants to know the reasons for their scores.

Federal Reserve Study. Four economists at the Board of Governors of the Federal Reserve System have recently released a conceptual and empirical study on the use of credit scoring systems in mortgage lending.[82] Their broad assessment of the models is that [C]redit scoring is a technological innovation which has increased the speed and consistency of risk assessment while reducing costs. Research has uniformly found that credit history scores are powerful predictors of future loan performance. All of these features suggest that credit scoring is likely to benefit both lenders and consumers.''[83]

The authors evaluate the current state-of-the-art of development of credit scoring models, focusing particularly on the comprehensiveness of statistical information used to develop the scoring equations. They present a conceptual framework in which statistical predictors of default include regional and local market conditions, individual credit history, and applicants' characteristics other than credit history. The authors observe that the developers of credit scoring models have tended to disregard regional and local market conditions in model construction, and such neglect may tend to reduce the predictive accuracy of scoring equations. To determine the extent of the problem, they analyzed Equifax credit scores together with mortgage payment history data for households living in each of 994 randomly selected counties from across the country. The authors use these data to assess the variability of credit scores relative to county demographic and economic characteristics.

The authors find a variety of pieces of evidence which confirm their suspicions: Credit scores tended to be relatively lower in areas with relatively high county unemployment rates, areas that have experienced recent rises in unemployment rates, areas with high minority population, areas with lower median educational attainment, areas with high percentages of individuals living in poverty, areas with low median incomes and low house values, and areas with relatively high proportions of younger populations and lower proportions of older residents.

This analysis suggests the need for a two-step process of improvement of the equations and their application, in which (a) new statistical analyses would be performed to incorporate the omitted environmental variables, and (b) additional variables bearing on individuals' prospective and prior circumstances will be taken into account in determining their credit scores.

These authors also discuss the relationship between credit scoring and discrimination. They find a significant statistical relationship between credit history scores and minority composition of an area, after controlling for other locational characteristics. From this, they conclude that concerns about potential disparate impact merit future study. However, a disparate impact study must include a business justification analysis to demonstrate the ability of the score card to predict defaults and an analysis of whether any alternative, but equally-predictive, score card has a less disproportionate effect.

Urban Institute Study. The Urban Institute recently submitted a report to HUD on a four-city reconnaissance study of issues related to the single-family underwriting guidelines and practices of Fannie Mae and Freddie Mac.[84] The study included interviews with informants knowledgeable about mortgage markets and GSE business practices on the national level and in the four cities.

The study observes, as did the Fed study summarized above, that minorities are more likely than whites to fail underwriting guidelines. Therefore, as a general matter the GSEs' underwriting guidelines—as well as the underwriting guidelines of others in the industry—do have disproportionate adverse effects on minority loan applicants.[85]

Based on the field reconnaissance in four metropolitan housing markets, the study makes several observations about the operation of credit scoring systems in practice, as follows:[86]

(i) Credit scores are used in mortgage underwriting to separate loans that must be

[80] Fannie Mae Foundation. *African American and Hispanic Attitudes on Homeownership: A Guide for Mortgage Industry Leaders,* (1998), p. 3.

[81] Fannie Mae Foundation. (1998), p. 14.

[82] Robert B. Avery, Raphael W. Bostic, Paul S. Calem, and Glenn B. Canner, *Credit Scoring: Issues and Evidence from Credit Bureau Files,* mimeo., (1998).

[83] Avery *et al.* (1998), p. 24.

[84] Kenneth Temkin, Roberto Quercia, George Galster, and Sheila O'Leary, *A Study of the GSEs' Single Family Underwriting Guidelines: Final Report.* Washington DC: U.S. Department of Housing and Urban Development, (April 1999). This study involves an analysis of the GSEs' underwriting guidelines in general. This section reviews only the aspects of the study related to mortgage scoring. A broader review of this paper is provided below in section E.4.

[85] Temkin, *et al.* (1999), p.2.

[86] Temkin, *et al.* (1999), p. 5; pp. 26–27.

referred to loan underwriters from loans that may be forwarded directly to loan officers; for example, a 620 score was mentioned by some respondents as the line below which the loan officer must refer the loan for manual underwriting. It is very difficult for applicants with low credit scores to be approved for a mortgage, according to the lenders interviewed by the Urban Institute.

(ii) Some respondents believe the GSEs are applying cutoffs inflexibly, while others believe that lenders are not taking advantage of flexibility allowed by the GSEs.

(iii) Some respondents believe that credit scores may not be accurate predictors of loan performance, despite the claims of users of these scores. Respondents who voiced this opinion tended to base these observations on their personal knowledge of low-income borrowers who are able to keep current on payments, rather than on an understanding of statistical validation studies of the models.

(iv) Respondents indicate that the ''black box'' nature of the credit scoring process creates uncertainty among loan applicants and enhances the intimidating nature of the process for them.

Based on these findings, the authors conclude that ''the use of automated underwriting systems and credit scores may place lower-income borrowers at a disadvantage when applying for a loan, even though they are acceptable credit risks.''

The report includes several recommendations for ongoing HUD monitoring of the GSEs' underwriting including their use of credit scoring models. One suggestion is to develop a data base on the GSEs' lending activities relevant for analysis of fair lending issues. The data would include credit scores to reveal the GSEs' patterns of loan purchase by credit score. A second suggestion is to conduct analyses of the effects of credit scoring systems using a set of ''fictitious borrower profiles'' that would reveal how the systems reflect borrower differences in income, work history, credit history, and other relevant factors. HUD has begun following up on the Urban Institute's recommendations. For instance, in February 1999, HUD requested the information and data needed to analyze the GSEs' automated underwriting systems.

Concluding Observation. It is important to note that both of the studies reviewed above comment on the problem of correlation of valid predictors of default (income, etc.) with protected factors (race, etc.). Both studies suggest that, ultimately, the question whether mortgage credit scoring models raise any problems of legal discrimination based on disparate effects would hinge on a business necessity analysis and analysis of whether any alternative underwriting procedures with less adverse disproportionate effect exist.

e. Subprime Loans

Another major development in housing finance has been the recent growth in subprime loans. In the past borrowers traditionally obtained an ''A'' quality (or ''investment grade'') mortgage or no mortgage. However, an increasing share of recent borrowers have obtained ''subprime'' mortgages, with their quality denoted as ''A-minus,'' ''B,'' ''C,'' or even ''D.'' The subprime borrower typically is someone who has experienced credit problems in the past or has a high debt-to-income ratio.[87] Through the first nine months of 1998, ''A-minus'' loans accounted for 63 percent of the subprime market, with ''B'' loans representing 24 percent and ''C'' and ''D'' loans making up the remaining 13 percent.[88]

Because of the perceived higher risk of default, subprime loans typically carry mortgage rates that in some cases are substantially higher than the rates on prime mortgages. While in many cases these perceptions about risk are accurate, some housing advocates have expressed concern that there are a number of cases in which the perceptions are actually not accurate. The Community Reinvestment Association of North Carolina (CRA*NC), conducted a study based on HMDA data, records of deeds, and personal contacts with effected borrowers in Durham County, NC. They found that subprime lenders make proportionally more loans to minority borrowers and in minority neighborhoods than to whites and white neighborhoods at the same income level. African-American borrowers represent 20 percent of subprime mortgages in Durham County, but only 10 percent of prime market.[89] As a result, these borrowers can end up paying very high mortgage rates that more than compensate for their additional risks to lenders. High subprime mortgage rates make homeownership more expensive or force subprime borrowers to buy less desirable homes than they would be able to purchase if they paid lower prime rates on their mortgages.

The HMDA database does not provide information on interest rates, points, or other loan terms that would enable researchers to separate more expensive subprime loans from other loans. However, the Department has identified 200 lenders that specialize in such loans, providing some information on the growth of this market.[90] This data shows that mortgages originated by subprime lenders, and reported to HMDA, has increased from 104,000 subprime loans in 1993 to 210,000 in 1995 and 997,000 in 1998. Most of the subprime loans reported to HMDA are refinance loans; for example, refinance loans accounted for 80 percent of the subprime loans reported by the specialized subprime lenders in 1997.

An important question is whether borrowers in the subprime market are sufficiently creditworthy to qualify for more traditional loans. Freddie Mac has said that one of the promises of automated underwriting is that it might be better able to identify borrowers who are unnecessarily assigned to the high-cost subprime market. It has estimated that 10–30 percent of borrowers who obtain mortgages in the subprime market could qualify for a conventional prime loan through Loan Prospector, its automated underwriting system.[91]

Most of the subprime loans that were purchased by the GSEs in past years were purchased through structured transactions. Under this form of transaction, whole groups of loans are purchased, and not all loans necessarily meet the GSEs' traditional underwriting guidelines. The GSEs typically guarantee the so-called ''A'' tranche, which is supported by a ''B'' tranche that covers default costs.

An expanded GSE presence in the subprime market could be of significant benefit to lower-income families, minorities, and families living in underserved areas. HUD's research shows that in 1998: African-Americans comprised 5.0 percent of market borrowers, but 19.4 percent of subprime borrowers; Hispanics made up 5.2 percent of market borrowers, but 7.8 percent of subprime borrowers; very low-income borrowers accounted for 12.1 percent of market borrowers, but 23.3 percent of subprime borrowers; and borrowers in underserved areas amounted to 24.8 percent of market borrowers, but 44.7 percent of subprime borrowers.[92]

Most subprime borrowers are classified as ''A-minus,'' which means that they are slightly below investment grade due to the borrower's past credit problems. Freddie Mac has developed initiatives to allow its Seller/Servicers using Loan Prospector to sell them ''A-minus'' loans. In April 1999 Freddie Mac began a purchasing ''A-minus'' loans with prepayment penalties on a flow basis and has provided guarantees for the senior portions of mortgage securitizations backed in part by B and C loans.[93] Freddie Mac hopes that the information gleaned from these initiatives will enable it to study the performance of subprime loans and enhance its ability to provide financing in this market. One concern Freddie Mac has is that as the GSEs get deeply involved in the subprime market,

[87] Standard & Poor's B and C mortgage guidelines can be used to illustrate that underwriting criteria in the subprime market becomes more flexible as the grade of borrower moves from the most creditworthy A-borrowers to the riskier D borrowers. For example, the A-grade borrower is allowed to be delinquent 30 days on his mortgage twice in the last year whereas the D grade borrower is allowed to be delinquent 30 days on his mortgage credit five times in the last year. Moreover, the A-borrower is permitted to have a 45 percent debt-to-income ratio compared to the D grade borrower's 60 percent.

[88] ''Subprime Product Mix, Strategies Changed During a Turbulent 1998,'' *Inside B&C Lending.* (December 21, 1998), p. 2.

[89] ''Renewed Attack on 'Predatory' Subprime Lenders.'' *Fair Lending/CRA Compass,* (June 1999) and http://cra-cn.home.mindspring.com.

[90] See Randall M. Scheessele. *1998 HMDA Highlights,* Housing Finance Working Paper HF–009, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, (October 1999). Nonspecialized lenders such as banks and thrifts also make subprime loans, but no data is available to estimate the number of these loans.

[91] Freddie Mac, *We Open Doors for America's Families,* Freddie Mac's Annual Housing Activities Report for 1997, (March 16, 1998), p. 23.

[92] The statistics cited for the ''market'' refer to all conforming conventional mortgages (both home purchase and refinance). The data for the subprime market are for 200 lenders that specialize in such loans; see Scheessele, op. cit.

[93] ''Freddie Mac Begins Buying A-Loans With Prepay Penalties,'' *Inside Mortgage Finance.* (May 21, 1999), p. 9; and ''Democratic Senator Suggests Fannie and Freddie Could Improve Subprime Mortgage Market,'' *Inside Mortgage Finance.* (June 25, 1999), pp. 5–6.

and if they take on a first-loss position, servicing quality might erode.[94]

Fannie Mae has not been as involved in the subprime market as Freddie Mac to date, but it has expressed its intent to fully enter the ''A-minus'' market over the next several years.[95] During 1998, Fannie Mae approximates that it purchased $10 billion in ''Alt-A'' loans, about a quarter of that market. In September 1999, Fannie Mae announced the availability of the ''Timely Payment Rewards'' mortgage. Under this product, borrowers who qualify but have slightly impaired credit are eligible for a mortgage with a higher rate than the standard conventional mortgage. After 24 months of paying the mortgage on time, the borrower is guaranteed a one percent interest rate reduction.[96] Fannie Mae sees its Desktop Underwriter automated underwriting system and other technology initiatives as the keys which will enable it to manage credit risk of such loans in a manner that allows a greatly expanded presence in the subprime market.

Increased involvement by the GSEs in the subprime market will result in more standardized underwriting guidelines. As the subprime market becomes more standardized, market efficiencies will reduce borrowing costs. Lending to credit-impaired borrowers will, in turn, increasingly make good business sense for the mortgage market.

f. Loans on Manufactured Housing

Manufactured housing provides low-cost, basic-quality housing for millions of American households, especially younger, lower-income families in the South, West, and rural areas of the nation. Many households living in manufactured housing because they simply cannot afford site-built homes, for which the construction cost per square foot is much higher. Because of its affordability to lower-income families, manufactured housing is one of the fastest-growing parts of the American housing market.[97]

The American Housing Survey found that 15.5 million people lived in 7 million manufactured homes in the United States in 1995, and that such units accounted for 6.3 percent of the housing stock, an increase from 5.4 percent in 1985. Shipments of manufactured homes rose steadily from 171,000 units in 1991 to 373,000 units in 1998. The industry grew much faster over this period in sales volume, from $4.7 billion in 1991 to $16.4 billion in 1998, reflecting both higher sales prices and a major shift from single-section homes to multisection homes, which contain two or three units which are joined together on site.[98]

Despite their eligibility for mortgage financing, only about 10–20 percent of manufactured homes[99] are financed with mortgages secured by the property, even though half of owners hold title to the land on which the home is sited. Most purchasers of manufactured homes take out a personal property loan on the home and, if they buy the land, a separate loan to finance the purchase of the land.

In 1995 the average loan size for a manufactured home was $24,500, with a 15 percent down payment and term of 13 years. Rates averaged about 3 percentage points higher than those paid on 15-year fixed rate mortgages, but borrowers benefit from very rapid loan-processing and underwriting standards that allow high debt payment-to-income (''back-end'') ratios.

Traditionally loans on manufactured homes have been held in portfolio, but a secondary market has emerged since trading of asset-backed securities collateralized by manufactured home loans was initiated in 1987. Investor interest has been reported as strong due to reduced loan losses, low prepayments, and eligibility for packaging of such loans into real estate mortgage investment conduits (REMICs). The GSEs' underwriting standards allow them to buy loans on manufactured homes that meet the HUD construction code, if they are owned, titled, and taxed as real estate.

The GSEs are beginning to expand their roles in the manufactured home loan market.[100] A representative of the Manufactured Housing Institute has stated that ''Clearly, manufactured housing loans would fit nicely into Fannie Mae's and Freddie Mac's affordable housing goals.''[101] Given that manufactured housing loans often carry relatively high interest rates, an enhanced GSE role could also improve the affordability of such loans to lower-income families.

D. Factor 2: Economic, Housing, and Demographic Conditions: Multifamily Mortgage Market

Since the early 1990s, the multifamily mortgage market has become more closely integrated with global capital markets, although not to the same degree as the single-family mortgage market. In 1997, 34 percent of multifamily mortgage originations were securitized, compared with 50 percent of single-family originations.[102]

Loans on multifamily properties are typically viewed as riskier than their single-family counterparts. Property values, vacancy rates, and market rents in multifamily properties appear to be highly correlated with local job market conditions, creating greater sensitivity of loan performance to economic conditions than may be experienced in the single-family market.

Within much of the single-family mortgage market, the GSEs occupy an undisputed position of industrywide dominance, holding loans or guarantees with an unpaid principal balance (UPB) of $1.5 trillion, comprising 36 percent of $4.0 trillion in outstanding single-family mortgage debt as of the end of 1997. In multifamily, the overall market presence of the GSEs is more modest. At the end of 1997, the GSEs direct holdings and guarantees were $41.4 billion, representing 13.8 percent of $301 billion in outstanding multifamily mortgage debt.[103] Based on market origination volume estimated at $40.7 billion, GSE acquisitions during 1997 represented 24 percent of the conventional multifamily market.[104]

1. Special Issues and Unmet Needs

Recent studies have documented a pressing unmet need for affordable housing. For

[94] ''Subprime Mortgage Market Nervously Makes Room for Government-Sponsored Enterprises,'' *Inside Mortgage Finance.* (February 19, 1999), p. 5–6.

[95] Fannie Mae's plans regarding its entry into the A-minus and ''Alternative-A'' (Alt-A) markets are discussed in ''Fannie Mae to Fully Enter Alt-A Market in Two Years,'' Origination News, November 1998, p. 33. The Alt-A market generally involves conforming size mortgages made to A quality borrowers that fall outside Fannie Mae's or Freddie Mac's purchase requirements due to lack of documentation, the property type, loan-to-value ratio, or a combination of the three.

[96] Fannie Mae press release, (September 30, 1999).

[97] A detailed discussion of manufactured housing is contained in Kimberly Vermeer and Josephine Louie, *The Future of Manufactured Housing,* Joint Center for Housing Studies, Harvard University, (January 1997).

[98] Data on industry shipments and sales has been obtained from ''U.S. Housing Market Conditions,'' U.S. Department of Housing and Urban Development (May, 1999), p. 51.

[99] Although the terms are sometimes used interchangeably, manufactured housing and mobile homes differ in significant ways relative to construction standards, mobility, permanence, and financing (These distinctions are spelled out in detail in Donald S. Bradley, ''Will Manufactured Housing Become Home of First Choice?'' *Secondary Mortgage Markets,* (July 1997)). Mobile homes are not covered by national construction standards, though they may be subject to State or local siting requirements. Manufactured homes must be built according to the National Manufactured Housing Construction Safety and Standards Act of 1974. In accordance with this act, HUD developed minimum building standards in 1976 and upgraded them in 1994. Manufactured homes, like mobile homes, are constructed on a permanent chassis and include both axles and wheels. However, with manufactured housing, the axles and wheels are intended to be removed at the time the unit is permanently affixed to a foundation. Manufactured homes, unlike mobile homes, are seldom, if ever, moved. Mobile homes are financed with personal property loans, but manufactured homes are eligible for conventional-mortgage financing if they are located on land owned by or under long-term lease to the borrower. Other types of factory-built housing, such as modular and panelized homes, are not included in this definition of ''manufactured housing.'' These housing types are often treated as ''site built'' for purposes of eligibility for mortgage financing.

[100] Freddie Mac, the Manufactured Housing Institute and the Low Income Housing Fund have formed an alliance to utilize manufactured housing along with permanent financing and secondary market involvement to bring affordable, attractive housing to underserved, low- and moderate-income urban neighborhoods. *Origination News.* (December 1998), p.18.

[101] *Mortgage-Backed Securities Letter.* (September 7, 1998), p. 3.

[102] *The Mortgage Market Statistical Annual for 1998* (Washington, DC: Inside Mortgage Finance Publications), 203, 425; *U.S. Housing Market Conditions* (November 1998), Table 17.

[103] *Federal Reserve Bulletin,* June 1998, A 35. The comparable figure for year-end 1992, before the interim housing goals took effect, was 10.5 percent. (Federal Reserve Bulletin, (December 1993), A 38.)

[104] Mortgages acquired by the GSEs during 1997 include some seasoned loans originated before 1997, but, recognizing that it is likely that the GSE will purchase some 1997 acquisitions in later years, the 24 percent figure provides a fairly good indicator of the magnitude of the GSEs' multifamily presence that year . GSE multifamily market share appears to have risen significantly, to approximately 38 percent, in 1998. The size of the conventional multifamily market is discussed in Appendix D.

example, the Harvard University Joint Center for Housing Studies, in its report *State of the Nation's Housing 1997,* points out that:

(i) Despite the recent growth in homeownership rates, the absolute number of households without access to affordable housing is growing because the rental stock is not keeping up with the growth in household formation. ''Homeownership is more affordable today than during much of the 1980s and early 1990s,'' but renter households ''have received no comparable relief from high housing costs.''

(ii) The affordable stock continues to shrink as losses due to abandonment and demolition have outpaced the rate at which units filter down into the low cost stock. Reductions in federal subsidies may contribute to further losses in the affordable stock.

(iii) The problems of extremely low-income households remains the largest and most urgent priority. The number of families receiving rental subsidies has actually decreased.[105]

The affordable housing issues go beyond the need for greater efficiency in delivering capital to the rental housing market. In many cases, subsidies are needed in order for low-income families to afford housing that meets adequate occupancy and quality standards. Nevertheless, greater access to reasonably priced capital can reduce the rate of losses to the stock, and can help finance the development of new or rehabilitated affordable housing when combined with locally funded subsidies. Development of a secondary market for affordable housing is one of many tools needed to address these issues.

Recent scholarly research suggests that more needs to be done to develop the secondary market for affordable multifamily housing.[106] Cummings and DiPasquale (1998) point to the numerous underwriting, pricing, and capacity building issues that impede the development of this market. They suggest the impediments can be addressed through the establishment of affordable lending standards, better information, and industry leadership.

(i) More consistent standards are especially needed for properties with multiple layers of subordinated financing (as is often the case with affordable properties allocated Low Income Housing Tax Credits and/or local subsidies).

(ii) More comprehensive and accurate information, particularly with regard to the determinants of default, can help in setting standards for affordable lending.

(iii) Leadership from the government or from a GSE is needed to develop consensus standards; it would be unprofitable for any single purely private lender to provide because costs would be borne privately but competitors would benefit.

2. Underserved Market Segments

There is evidence that segments of the multifamily housing stock have been affected by costly, difficult, or inconsistent availability of mortgage financing. Small properties with 5–50 units represent an example. The fixed-rate financing that is available is typically structured with a 5–10 year term, with interest rates as much as 150 basis points higher than those on standard multifamily loans, which may have adverse implications for affordability.[107] This market segment appears to be dominated by thrifts and other depositories who keep these loans in portfolio. In part to hedge interest rate risk, loans on small properties are often structured as adjustable-rate mortgages.

Multifamily properties with significant rehabilitation needs have experienced difficulty in obtaining mortgage financing. Properties that are more than 10 years old are typically classified as ''C'' or ''D'' properties, and are considered less attractive than newer properties by many lenders and investors.[108] Fannie Mae's underwriting guidelines for negotiated transactions state that ''the Lender is required to use a more conservative underwriting approach'' for transactions involving properties 10 or more years old.[109] Fannie Mae funding for rehabilitation projects is generally limited to $6,000 per unit.[110] Multifamily rehabilitation loans account for 1.9 percent of units backing Freddie Mac 1998 purchases. Rehabilitation loans accounted for only 0.5 percent of units backing Fannie Mae's purchases that year.

Historically, the flow of capital into housing for seniors has been characterized by a great deal of volatility. A continuing lack of long-term, fixed-rate financing jeopardizes the viability of a number of some properties. There is evidence that financing for new construction remains scarce.[111] Both Fannie Mae and Freddie Mac offer Senior Housing pilot programs.

Under circumstances where mortgage financing is difficult, costly, or inconsistent, GSE intervention may be desirable. Follain and Szymanoski (1995) say that ''a [market] failure occurs when the market does not provide the quantity of a particular good or service at which the marginal social benefits of another unit equal the marginal social costs of producing that unit. In such a situation, the benefits to society of having one more unit exceeds the costs of producing one more unit; thus, a rationale exists for some level of government to intervene in the market and expand the output of this good.'' [112] It can be argued that the GSEs have the potential to contribute to the mitigation of difficult, costly, or inconsistent availability of mortgage financing to segments of the multifamily market because of their funding cost advantage, and even a responsibility to do so as a consequence of their public missions, especially in light of the limitations on direct government resources available to multifamily housing in today's budgetary environment.

3. Recent History and Future Prospects in Multifamily

The expansion phase of the real estate cycle been well underway for several years now, at least insofar as it pertains to multifamily. Rental rates have been rising, and vacancy rates have been relatively stable, contributing to a favorable environment for multifamily construction and lending activity.[113] Delinquencies on commercial mortgages reached an 18-year low in 1997.[114] Some analysts have warned that recent prosperity may have contributed to overbuilding in some markets and deterioration in underwriting standards.[115] A

[105] See also *Rental Housing Assistance—The Crisis Continues: The 1997 Report to Congress on Worst Case Housing Needs,* U.S. Department of Housing and Urban Development, Office of Policy Development and Research (April 1998).

[106] Jean L. Cummings and Denise DiPasquale, ''Developing a Secondary Market for Affordable Rental Housing: Lessons From the LIMAC/Freddie Mac and EMI/Fannie Mae Programs,'' Cityscape: A Journal of Policy Development and Research, 4(1), (1998), pp. 19–41.

[107] Drew Schneider and James Follain assert that interest rates on small property mortgages are as high as 300 basis points over comparable maturity Treasuries in ''A New Initiative in the Federal Housing Administration's Office of Multifamily Housing Programs: An Assessment of Small Projects Processing,'' *Cityscape: A Journal of Policy Development and Research* 4(1): 43–58, 1998. Berkshire Realty, a Fannie Mae Delegated Underwriting and Servicing (DUS) lender based in Boston, was quoting spreads of 135 to 150 basis points in ''Loans Smorgasbord,'' Multi-Housing News, August–September 1996. Additional information on the interest rate differential between large and small multifamily properties is contained in William Segal and Christopher Herbert, *Segmentation of the Multifamily Mortgage Market: The Case of Small Properties,* paper presented to annual meetings of the American Real Estate and Urban Economics Association, (January 2000).

[108] On the relation between age of property and quality classification see Jack Goodman and Brook Scott, ''Rating the Quality of Multifamily Housing,'' *Real Estate Finance,* (Summer, 1997).

[109] *Fannie Mae Multifamily Negotiated Transactions Guide,* Section 305.03, ''Properties More than Ten Years Old.''

[110] *Fannie Mae Multifamily Delegated Underwriting and Servicing Guide,* Section 306.01, ''Definition—Moderate Rehabilitation Property.'' Loans involving rehabilitation costs exceeding $6,000 per unit may be approved on an exception basis, but in no event may rehabilitation costs exceeds $10,000 per unit or 25 percent of the loan amount, whichever is lower. In October, 1998 Fannie Mae announced a rehabilitation lending initiative providing up to $15,000 per on the condition that all units financed are affordable to low- and moderate income tenants.

[111] W. Donald Campbell. *Seniors Housing Finance,* prepared for American Association of Retired Persons White House Conference on Aging Mini-Conference on Expanding Housing Choices for Older People, (January 26–27, 1995).

[112] James R. Follain and Edward J. Szymanoski. ''A Framework for Evaluating Government's Evolving Role in Multifamily Mortgage Markets,'' *Cityscape: A Journal of Policy Development and Research* 1(2), (1995), p. 154.

[113] Despite sustained economic expansion, however, the rise in homeownership, has not fallen below 9 percent in recent years. (Regis J. Sheehan, ''Steady Growth,'' *Units,* (November/December 1998), pp. 40–43). Regarding rents and vacancy rates see also Ted Cornwell. ''Multifamily Lending Approaches Record Level,'' *National Mortgage News,* (September 23, 1996); and David Berson, Monthly Economic and Mortgage Market Report, Fannie Mae, (November 1998).

[114] American Council of Life Insurance data reported in *Inside MBS & ABS,* (March 20, 1998).

[115] A November, 1998 ''Review of the Short-Term Supply/Demand Conditions for Apartments'' by Peter P. Kozel of Standard and Poor's concludes that ''in some markets, the supply of units exceeds the likely level of demand, and in only a few MSAs should the pace of development accelerate.'' See also ''Apartment Projects Find Lenders Are Ready with Financing,'' Lew Sichelman, *National*

September, 1998 report by the Office of the Comptroller of the Currency anticipates continued decline in credit standards at the 77 largest national banks as a consequence of heightened competition between lenders, and the Federal Deposit Insurance Corporation has expressed similar concerns regarding 1,212 banks it examined.[116]

Growth in the multifamily mortgage market has been fueled by investor appetites for Commercial Mortgage Backed Securities (CMBS). Nonagency securitization of multifamily and commercial mortgages received an initial impetus from the sale of nearly $20 billion in mortgages acquired by the Resolution Trust Corporation (RTC) from insolvent depositories in 1992–1993. Nonagency issuers typically enhance the credit-worthiness of their offerings through the use of senior-subordinated structures, combining investment-grade senior tranches with high-yield, below investment-grade junior tranches designed to absorb any credit losses.[117]

Because of their relatively low default risk in comparison with loans on other types of income property, multifamily mortgages are often included in mixed-collateral financing structures including other commercial property such as office buildings, shopping centers, and storage warehouses. CMBS volume reached $30 billion in 1996, $44 billion in 1997, and $78 billion in the 1998, approximately 25 percent of which was multifamily.[118]

During the financial markets turmoil in the fall of 1998, investors expressed reluctance to purchase the subordinated tranches in CMBS transactions, jeopardizing the ability of issuers to provide a cost-effective means of credit-enhancing the senior tranches as well.[119] When investor perceptions regarding credit risk on subordinated debt escalated rapidly in August and September, the GSEs, which do not typically use subordination as a credit enhancement, benefited from a ''flight to quality.''[120] As spreads on AAA-rated CMBS widened from 85 basis points to 200 basis points over to comparable-maturity Treasury securities, some conduits found it advantageous to sell whole loans to the life insurance companies, the GSEs, and other traditional investors rather than securitize them directly as they had originally planned.[121] The withdrawal from the market of a number of the three largest CMBS originators, Nomura/Capital America, Conti-Trade Services and Daiwa Securities will contribute to higher levels of GSE multifamily market share on a continuing basis.[122] Ultimately, the relation between GSE and CMBS yield spreads will be a major determinant of GSE multifamily market share.[123] Continuing uncertainty in the CMBS sector adds a note of uncertainty to projections regarding GSE multifamily acquisition volume in Appendix D.

Depository institutions and life insurance companies, formerly among the largest holders of multifamily debt, have experienced a decline in their share of the market at the expense of CMBS conduits.[124] Increasingly, depositories and life insurance companies are participating in multifamily markets by holding CMBS rather than whole loans, which are often less liquid, more expensive, and subject to more stringent risk-based capital standards.[125] In recent years a rising proportion of multifamily mortgages have been originated to secondary market standards, a consequence of a combination of factors including the establishment of a smoothly functioning securitization ''infrastructure;'' the greater liquidity of mortgage-related securities as compared with whole loans; and the desire for an ''exit strategy'' on the part of investors.[126]

Because of their limited use of mortgage debt, increased equity ownership of multifamily properties by REITs may have contributed to increased competition among mortgage originators, servicers and investors for a smaller mortgage market than would otherwise exist. During the first quarter of 1997, REITs accounted for 45 percent of all commercial real estate transactions, and the market capitalization of REITs at the end of January 1998 exceeded that of outstanding CMBS.[127]

Demographic factors will contribute to continued steady growth in the new construction segment of the multifamily mortgage market. The number of apartment households is expected to grow approximately 1.1 percent per year over 2000–2005. Taking into consideration losses from the housing stock, it has been projected that approximately 250,000–275,000 additional multifamily units will be needed in order to meet anticipated demand.[128] This flow is approximately half that of the mid-1980s, but twice that of the depressed early 1990s. In 1998, 273,900 apartment units were completed.[129]

The high degree of volatility of multifamily new construction experienced historically is consistent with a view that this sector of the housing market is driven more by fluctuations in the availability of financing than by demographic fundamentals. The stability and liquidity of the housing finance system is therefore a significant determinant of whether the volume of new construction remains consistent with demand.

Past experience suggests that the availability of financing for all forms of commercial real estate is highly sensitive to the state of the economy. In periods of economic uncertainty, lenders and investors sometimes raise underwriting and credit standards to a degree that properties that would be deemed creditworthy under normal circumstances are suddenly unable to obtain financing. Ironically, difficulty in obtaining financing may contribute to a fall in property values that can exacerbate a credit crunch.[130]

Mortgage News, (April 14, 1997); *Commercial Lenders Warned That They Could Spur Overbuilding, National Mortgage News,* (March 30, 1998); ''Multifamily, Commercial Markets Grow Up,'' Neil Morse, *Secondary Marketing Executive,* (February 1998);'' ''Recipe for Disaster,'' *National Mortgage News* editorial, (July 6, 1998).

[116] *1998 Survey of Credit Underwriting Practices,* Comptroller of the Currency, National Credit Committee. ''For the fourth consecutive year, underwriting standards for commercial loans have eased,'' states the OCC report. ''Examiners again cite competitive pressure as the primary reason for easing underwriting standards.'' The weakening of underwriting practices is especially concentrated in commercial real estate lending according to a the Federal Deposit Insurance Corporation's Report on *Underwriting Practices,* (October 1997–March 1998). See also Donna Tanoue, ''Underwriting Concerns Grow,'' *National Mortgage News,* (September 21, 1998), and ''Making the Risk-Takers Pay,'' *National Mortgage News,* (October 12, 1998).

[117] On the effects of multifamily mortgage securitization see ''Financing Multifamily Properties: A Play With new Actors and New Lines,'' Donald S. Bradley, Frank E. Nothaft, and James L. Freund, *Cityscape, A Journal of Policy Development and Research,* vol. 4, No. 1 (1998); and ''Financing Multifamily Properties,'' Donald S. Bradley, Frank E. Nothaft, and James L. Freund, Urban Land (November 1998).

[118] ''New-Issue CMBS Volume,'' *Commercial Mortgage Alert,* (October 5, 1998); Inside MBS & ABS, (February 12, 1999).

[119] ''New CMBS Headache: B-Piece Market Softens,'' *Commercial Mortgage Alert,* (September 21, 1998); ''Criimi Bankruptcy Accelerates CMBS Freefall,'' *Commercial Mortgage Alert,* (October 12, 1998); ''Capital America Halts Lending Amid Woes,'' *Commercial Mortgage Alert,* (October 12, 1998).

[120] On CMBS spreads see ''Turmoil Hikes Loan Rates'' in *Wall Street Mortgage Report,* (September 14, 1998). Regarding implications for the GSEs of the conduit pullback see ''No Credit Crunch for First Mortgages'' in *Commercial Mortgage Alert,* (October 12, 1998).

[121] Sally Gordon, ''A Lesson From the Capital Markets,'' *Mortgage Banking* Special Issue—Commercial, (February 1999), pp. 12–18.

[122] See '''99 CMBS Outlook: Fast Start, Then Lull,'' *Commercial Mortgage Alert,* (December 7, 1998); ''Chastened Conduits Get Back to Business,'' *Commercial Mortgage Alert,* (February 15, 1999). Nomura/Capital America's monthly CMBS volume had been at a level of approximately $1 billion. See also ''ContiFinancial Halts Originations, Plans Portfolio Selloff,'' *Real Estate Finance & Investment,* (November 9, 1998); and ''Nomura in US Quits CRE Lending,'' *National Mortgage News,* (December 21, 1998).

[123] CMBS yield spreads in early 1999 were approximately 75–100 basis points wider than those in the summer of 1998, but approximately 75–100 basis points narrower than the peak reached in the fall of 1998. ''Chastened Conduits Get Back to Business,'' *Commercial Mortgage Alert,* (February 15, 1999).

[124] ''Financing Multifamily Properties: A Play With New Actors and New Lines,'' Donald S. Bradley, Frank E. Nothaft, and James L. Freund, *Cityscape: A Journal of Policy Development and Research,* 4(1), (1998).

[125] *The Impact of Public Capital Markets on Urban Real Estate,* Clement Dinsmore, discussion paper, Brookings Institution Center on Urban and Metropolitan Policy, July 1998; ''Capital Availability Fuels Commercial Market Growth,'' Marshall Taylor, *Real Estate Finance Today,* (February 17, 1997).

[126] Board of Governors of the Federal Reserve System and U.S. Securities and Exchange Commission, *Report to the Congress on Markets for Small-Business- and Commercial-Mortgage-Backed Securities,* (September 1998).

[127] ''REITs Tally Nearly Half of All Big CRE Deals in First Quarter,'' *National Mortgage News,* (July 7, 1997); ''Will REITs, Mortgage-Backeds Make Difference in Downturn,'' Jennifer Goldblatt, *American Banker,* (February 18, 1998).

[128] ''Apartment Demographics: Good for the Long Haul?'' Jack Goodman, *Real Estate Finance,* (Winter 1997); ''The Multifamily Outlook,'' Jack Goodman, Urban Land, (November 1998).

[129] *U.S. Housing Market Conditions 2nd Quarter 1999,* U.S. Department of Housing and Urban Development (August 1999), Table 4.

[130] Howard Esaki, a principal in CMBS Research at Morgan Stanley Dean Witter stated recently that

Continued

The consensus viewpoint among most economists is that an economic recession in 2000 is unlikely.[131] However, the possibility of a global economic downturn cannot be dismissed.[132] The sensitivity of commercial real estate markets to investor perceptions regarding global volatility was demonstrated by the rise in CMBS spreads in September, 1998.[133] Thus, market disruptions could have adverse implications on U.S. commercial and residential mortgage markets.

4. Recent Performance and Effort of the GSEs Toward Achieving the Low- and Moderate-Income Housing Goal: Role of Multifamily Mortgages

The GSEs have rapidly expanded their presence in the multifamily mortgage market in the period since the housing goals were established in 1993. Fannie Mae has played a much larger role in the multifamily market, with purchases of $6.9 billion in 1997 compared with $2.7 billion by Freddie Mac. If Fannie Mae multifamily acquisitions maintain their recent growth rate, it appears likely that they will be successful in reaching its publicly announced goal of conducting $50 billion in multifamily transactions between 1994 and the end of the decade.[134] Fannie Mae's multifamily underwriting standards are highly influential and have been widely emulated throughout the industry. Freddie Mac has successfully rebuilt its multifamily program after a three-year hiatus during 1991–1993 precipitated by widespread defaults.

Multifamily loans represent a relatively small portion of the GSEs' business activities. For example, multifamily loans held in portfolio or guaranteed by the GSEs at the end of 1997 totaled $41.4 billion, less than 3 percent of their single-family combined portfolio and guaranteed holdings. In comparison, multifamily mortgages held or guaranteed by the GSEs represent approximately 8 percent of the overall stock of mortgage debt.[135]

However, the multifamily market contributes disproportionately to GSE purchases meeting both the Low- and Moderate-Income and Special Affordable Housing goals. In 1997, Fannie Mae's multifamily purchases represented 13.4 percent of their total acquisition volume, measured in terms of dwelling units. Yet these multifamily purchases comprised 26.7 percent of units qualifying for the Low- and Moderate Income Housing Goal, and 44.4 percent of units meeting the Special Affordable goal. Multifamily purchases were 8.2 percent of units backing Freddie Mac's 1997 acquisitions, 18.8 percent of units meeting the Low-and Moderate Income Housing Goal, and 31.4 percent of units qualifying for the Special Affordable Housing Goal.[136] The multifamily market therefore comprises a significant share of units meeting the Low- and Moderate-Income and Special Affordable Housing Goals for both GSEs, and the goals may have contributed to increased emphasis by both GSEs on multifamily in the period since the Final Rule took effect in 1995.[137]

The majority of units backing GSE multifamily transactions meet the Low- and Moderate Income Housing Goal because the great majority of rental units are affordable to families at 100 percent of median income, the standard upon which the Low- and Moderate Income Housing Goal is defined. For example, 33.3 percent of units securing Freddie Mac's 1997 one-family owner-occupied mortgage purchases met the Low- and Moderate Income Housing Goal, compared with 95.9 percent of its multifamily transactions. Corresponding figures for Fannie Mae were 33.8 percent and 85.2 percent.[138] For this reason, multifamily purchases represent a crucial component of the GSEs' efforts in meeting the Low- and Moderate Income Housing Goal.

Because such a large proportion of multifamily units qualify for the Low- and Moderate-Income Housing Goal and for the Special Affordable Housing Goal, Freddie Mac's weaker multifamily performance adversely affects its overall performance on these two housing goals relative to Fannie Mae. Units in multifamily properties accounted for 7.9 percent of Freddie Mac's mortgage purchases during 1996–1998, compared with 12.2 percent for Fannie Mae. Fannie Mae's greater emphasis on multifamily is a major factor contributing to the strength of its housing goals performance relative to Freddie Mac.

5. A Role for the GSEs in Multifamily Housing

By sustaining a secondary market for multifamily mortgages, the GSEs can extend the benefits that come from increased mortgage liquidity to many more lower-income families while helping private owners to maintain the quality of the existing affordable housing stock. In addition, standardization of underwriting terms and loan documents by the GSEs has the potential to reduce transactions costs. As the GSEs gain experience in areas of the multifamily mortgage market affected by costly, difficult, or inconsistent access to secondary markets, they gain experience that enables them to better measure and price default risk, yielding greater efficiency and further cost savings.

Ultimately, greater liquidity, stability, and efficiency in the secondary market due to a significant presence by the GSEs will benefit lower-income renters by enhancing the availability of mortgage financing for affordable rental units—in a manner analogous to the benefits the GSEs provide homebuyers. Providing liquidity and stability is the main role for the GSEs in the multifamily market, just as in the single-family market.

Current volatility in the CMBS market underlines the need for an ongoing GSE presence in the multifamily secondary market. The potential for an increased GSE presence is enhanced by virtue of the fact that an increasing proportion of multifamily mortgages are originated to secondary market standards, as noted previously. While the GSEs have also been affected by the widening of yield spreads affecting CMBS, historical experience suggests that agency spreads will converge to historical magnitudes as a consequence of the perceived benefits of federal sponsorship.[139] When this occurs, the capability of the GSEs to serve and compete in the multifamily secondary market will be enhanced.[140]

6. Multifamily Mortgage Market: GSEs' Ability To Lead the Industry

Holding 9.8 percent of the outstanding stock of multifamily mortgage debt and guarantees as of the end of 1997, Fannie Mae is regarded as an influential force within the multifamily market. Its Delegated Underwriting and Servicing (DUS) program, in which Fannie Mae delegates underwriting responsibilities to originators in return for a commitment to share in any default risk, now accounts for more than half its multifamily acquisitions, and has been regarded as highly successful.

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volatility in global markets contributed to a 10-20 percent decline in commercial real estate values in late 1998. John Hackett, ''CRE Seen Down 10% to 20%,'' *National Mortgage News,* (November 23, 1998), p. 1.

[131] The Congressional Budget Office, *The Economic and Budget Outlook: An Update,* (July 1999) predicts that GDP growth will slow from an annual rate exceeding 3.5 percent in recent years to 2.4 percent over 2000–2003 (p. 11). Standard & Poor's DRI, *The U.S. Economy,* (September 1999), estimates the probability of a recession in 2000, triggered by a collapse of the stock market, at 10 percent. Under this scenario, GDP growth would drop to 0.2 percent in 2000, but rebound to over 3 percent during the 2001–2003period.

[132] The World Bank Group, *Global Economic Prospects and the Developing Countries 1998/99: Beyond Financial Crisis,* 1998. Implications of the economic crisis in developing countries for lenders in developed countries is discussed in Martin Wolf, ''Borrowing: Let Lenders Beware,'' *Financial Times,* (December 9, 1998). DRI/McGraw Hill's *U.S. Financial Notes* says there is about a 30 percent chance of a ''hard landing'' in 1999 because of Brazil's decision to float the real and Japan's ongoing severe financial problems. Alternatively, if there is no recession in 1999, the result could be a later, but more severe, recession (February 18, 1999, p. 3).

[133] John Holusha, ''As Financing Pool Dries Up, Some See Opportunity,'' *New York Times,* November 1, 1998.

[134] See Fannie Mae's World Wide Web site at http://www.fanniemae.com.

[1] *Federal Reserve Bulletin,* (June 1998), A 35.

[136] 1997 Annual Housing Activity Reports, Table 1.

[137] William Segal and Edward J. Szymanoski. *The Multifamily Secondary Mortgage Market: The Role of Government-Sponsored Enterprises.* Housing Finance Working Paper No. HF–002, Office of Policy Development and Research, Department of Housing and Urban Development, (March 1997).

[138] HUD analysis of GSE loan-level data. Affordability data are missing on 11.1 percent of units backing Fannie Mae's 1997 multifamily acquisitions, which may contribute to the disparity between Fannie Mae and Freddie Mac regarding percentage of multifamily acquisitions contributing to the low-mod goal.

[139] *Fundingnotes,* Vol. 3, Issue 9; (September 1998), Eric Avidon, ''PaineWebber Lauds Fannie DUS Paper,'' *National Mortgage News,* (September 14, 1998), p. 21.

[140] There is evidence that the GSEs have benefited from recent widening in CMBS spreads because of their funding cost advantage. See ''No Credit Crunch for First Mortgages,'' *Commercial Mortgage Alert,* (October 12, 1998); and ''Turmoil a Bonanza for Freddie,'' *Commercial Mortgage Alert,* (November 2, 1998).

Freddie Mac's presence in the multifamily market is not as large as that of Fannie Mae, with year-end 1997 holdings of multifamily debt and guarantees representing 2.5 percent of the total. However, Freddie Mac is credited with rapidly rebuilding its multifamily operations since 1993. The GSEs' ability to lead the multifamily industry is discussed further below.

7. GSEs' Performance in the Multifamily Mortgage Market

GSE activity in the multifamily mortgage market has expanded rapidly since 1993, as noted previously. However, it is not clear that the potential of the GSEs to lead the multifamily mortgage industry has been fully exploited. In particular, the GSEs' multifamily purchases do not appear to be consistently contributing to mitigation of excessive cost of mortgage financing facing small properties with 5–50 units. GSE purchases of small loans with unpaid principal balance (UPB) less than or equal to $1 million have exhibited considerable volatility over 1993–1997, ranging from as little as 15 percent of the number of mortgage loans purchased (1996) to as high as 64 percent (1995).[141]

Based on data from the Survey of Residential Finance showing that 37 percent of units in mortgaged multifamily properties were in properties with 5–49 units, it appears reasonable to assume that loans backed by small properties account for 37 percent of multifamily units financed each year. Applying estimates of the dollar-size of the conventional multifamily market derived in Appendix D, and combining these with figures on loan amount per unit from GSE data in conjunction with data on loans securitized by private conduits to derive estimates of the annual volume of multifamily lending as measured in number of units financed, is appears that, during 1996–1998, the GSEs acquired loans representing only 5 percent of units in small multifamily properties with 5–50 units.

GSE multifamily acquisitions tend to involve larger properties than are typical for the market as a whole.[142] For example, the average number of units in Fannie Mae's 1997 multifamily transactions was 163, with a corresponding figure of 158 for Freddie Mac. Both of these averages are significantly higher than the overall market average of 33.4 units per property on 1995 originations estimated from the HUD Property Owners and Managers (POMS) survey.[143] A factor possibly contributing to the GSEs' emphasis on larger properties is the relatively high fixed multifamily origination costs, including appraisal, environmental review, and legal fees typically required under GSE underwriting guidelines.[144]

After evaluating the results of a $500 million Small Loan Experiment, Fannie Mae announced in October, 1998 that it had established a permanent Small Loan product through selected DUS lenders. Features include streamlined underwriting and due diligence procedures and documentation requirements. Unlike the standard DUS product, which has a $1 million minimum loan amount, there is no minimum loan amount for the Small Loan product.[145]

Another area affected by credit gaps, in which the GSEs have not demonstrated market leadership is rehabilitation loans. Fannie Mae applies more conservative underwriting standards to such properties, as discussed above. Both GSEs' relatively weak performance in the multifamily rehabilitation market segment is related to the fact that, since the inception of the interim housing goals in 1993, the great majority of units backing GSE multifamily mortgage purchases have been in properties securing refinance loans with an established payment history, in a proportion exceeding 80 percent in some years.[146]

In October, 1998 Fannie Mae announced a rehabilitation lending initiative providing up to $15,000 per unit on the condition that all units financed are affordable to low-and moderate income tenants. This product is intended to assist property owners in enhancing property quality and retaining tenants, strengthening competitiveness in relation to other similar properties.[147]

The GSEs have been conservative in their approach to multifamily credit risk.[148] HUD's analysis of prospectus data indicates that the average loan-to-value (LTV) ratio on pools of seasoned multifamily mortgages securitized by Freddie Mac during 1995 through 1996 was 55 percent. In comparison, the average LTV on private-label multifamily conduit transactions over 1995–1996 was 73 percent. Fannie Mae utilizes a variety of credit enhancements to further mitigate default risk on multifamily acquisitions, including loss sharing, recourse agreements, and the use of senior/subordinated debt structures.[149] Freddie Mac is less reliant on credit enhancements than is Fannie Mae, possibly because of a more conservative underwriting approach.[150]

GSE ambivalence regarding the perception of credit risk in lending on affordable multifamily properties is evident with regard to pilot programs established in 1991 between Freddie Mac and the Local Initiatives Managed Assets Corporation (LIMAC), a subsidiary of the Local Initiatives Support Corporation (LISC), and in 1994 between Fannie Mae and Enterprise Mortgage Investments (EMI), a subsidiary of the Enterprise Foundation. Cummings and DiPasquale (1998) conclude that both initiatives had mixed results, although the Fannie Mae/EMI pilot was more successful in a number of regards. The Freddie Mac/LIMAC initiative was suspended after two years with only one completed transaction, involving eight loans with an aggregate loan amount of $4.6 million. As of June, 1997, 15 transactions comprising $20.5 million had been completed under the Fannie Mae/EMI pilot, which is ongoing.

Both programs suffered initially from documentation requirements that borrowers perceived as burdensome. Cummings and DiPasquale observe that ''The smaller, nonprofit, and CDC developers that these programs intended to bring to the market were unprepared, and perhaps unwilling or unable, to meet the high costs of Freddie Mac's and Fannie Mae's due diligence requirements.''

E. Factor 3: Performance and Effort of the GSEs Toward Achieving the Low- and Moderate-Income Housing Goal in Previous Years

This section first discusses each GSE's performance under the Low- and Moderate-Income Housing Goal over the 1993–98 period. The data presented are ''official results''—i.e., they are based on HUD's in-depth analysis of the loan-level data submitted to the Department and the counting provisions contained in HUD's regulations in 24 CFR part 81, subpart B. As explained below, in some cases these ''official results'' differ from goal performance reported to the Department by the GSEs in their Annual Housing Activities Reports.

Following this analysis, the GSEs' past performance in funding low- and moderate-income borrowers in the single-family mortgage market is provided. Performance indicators for the Geographically-Targeted and Special Affordable Housing Goals are also included in order to present a complete picture in Appendix A of the GSEs' funding of single-family mortgages that qualify for the

[141] HUD analysis of GSE loan-level data.

[142] Larger properties may be perceived as less subject to income volatility caused by vacancy losses. Scale economies in securitization may also favor purchase of larger multifamily mortgages by the GSEs. Scale economies refer to the fixed costs in creating a mortgage backed security, and the smaller reduction in yield (higher security price) if these costs can be spread over larger unpaid principal balances.

[143] 1995 POMS data are used because 1995 represents the year with the most complete mortgage origination information in the Survey. 1996 GSE data are used because of number of units or property exhibited atypical behavior during 1995.

[144] These costs have been estimated at $30,000 for a typical transaction. Presentation by Jeff Stern, Vice President, Enterprise Mortgage Investments, HUD GSE Working Group, (July 23, 1998).

[145] ''Fannie Mae Offers Mortgage Financing for the Rehabilitation of Affordable Apartments; Also Expands Availability, Streamlines Procedures for Financing of Small Apartment Properties,'' Fannie Mae News Release, October 20, 1998. Freddie Mac's Conventional Cash Multifamily Mortgage Purchase Program includes a Small Loan Program for mortgages of $300,000—$1 million.

[146] Data from the HUD Property Owners and Managers Survey (POMS) suggests that, in and of itself, the GSEs' emphasis on refinance loans may roughly track that of the overall market.

[147] ''Fannie Mae Offers Mortgage Financing for the Rehabilitation of Affordable Apartments; Also Expands Availability, Streamlines Procedures for Financing of Small Apartment Properties,'' Fannie Mae News Release, October 20, 1998.

[148] Standard & Poor's described Fannie Mae's multifamily lending as ''extremely conservative'' in ''Final Report of Standard & Poor's to the Office of Federal Housing Enterprise Oversight (OFHEO),'' (February 3, 1997), p. 10.

[149] See William Segal and Edward J. Szymanoski. ''Fannie Mae, Freddie Mac, and the Multifamily Mortgage Market,'' *Cityscape: A Journal of Policy Development and Research,* vol. 4, no. 1 (1998), pp. 59–91.

[150] Freddie Mac's policy of re-underwriting each multifamily acquisition is a response to widespread defaults affecting its multifamily portfolio during the late 1980s according to Follain and Szymanoski (1995).

three housing goals. In addition, the findings from a wide range of studies—employing both quantitative and qualitative techniques to analyze several performance indicators and conducted by HUD, academics, and major research organizations—are summarized below.

Organization and Main Findings. Section E.1 reports the performance of Fannie Mae and Freddie Mac on the Low- and Moderate-Income Housing Goal. Section E.2 uses HMDA data and the loan-level data that the GSEs provide to HUD on their mortgage purchases to compare the characteristics of GSE purchases of single-family loans with the characteristics of all loans in the primary mortgage market and of newly-originated loans held in portfolio by depositories. Section E.3 summarizes the findings from several studies that have examined the role of the GSEs in supporting affordable lending. Section E.4 discusses the findings from a recent HUD-sponsored study of the GSEs' underwriting guidelines.[151] Finally, Section E.5 reviews the GSEs' support of the single-family rental market.

The Section's main findings with respect to the GSEs' single-family mortgage purchases are as follows:

(i) Both Fannie Mae and Freddie Mac surpassed the Low- and Moderate-Income Housing Goals of 40 percent in 1996 and 42 percent in 1997 and 1998.

(ii) Both Fannie Mae and Freddie Mac have improved their affordable lending [152] performance over the past six years but, on average, they have lagged the primary market in providing mortgage funds for lower-income borrowers and underserved neighborhoods. This finding is based both on HUD's analysis of GSE and HMDA data as well as on numerous studies by academics and research organizations.

(iii) The GSEs show very different patterns of home loan lending.[153] Through 1998, Freddie Mac has been less likely than Fannie Mae to fund single-family home mortgages for low-income families and their communities. The percentages of Freddie Mac's purchases benefiting historically underserved families and their neighborhoods have also been substantially less than the corresponding shares of total market originations. Freddie Mac has not made much progress closing the gap between its performance and that of the overall home loan market.

(iv) Fannie Mae's purchases more nearly match the patterns of originations in the primary market than do Freddie Mac's. However, during the 1993–98 period as a whole and the 1996–98 period during which the new goals were in effect, Fannie Mae has lagged depositories and others in the conforming market in providing funding for the lower-income borrowers and neighborhoods covered by the three housing goals.

(v) A large percentage of the lower-income loans purchased by the GSEs have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the needs of lower-income families who have little cash for making large down payments.

(vi) A study by The Urban Institute of lender experience with the GSEs' underwriting standards finds that the enterprises have stepped up their outreach efforts and have increased the flexibility in their underwriting standards, to better accommodate the special circumstances of lower-income borrowers. However, this study concludes that the GSEs' guidelines remain somewhat inflexible and that they are often hesitant to purchase affordable loans. Lenders also tell the Urban Institute that Fannie Mae has been more aggressive than Freddie Mac in market outreach to underserved groups, in offering new affordable products, and in adjusting their underwriting standards.

(vii) While single-family rental properties are an important source of low-income rental housing, they represent only a small portion of the GSEs' business. In addition, many of the single-family rental properties funded by the GSEs are one-unit detached units in suburban areas rather than the older, 2–4 units commonly located in urban areas.

1. Past Performance on the Low- and Moderate-Income Housing Goal

HUD's goals specified that in 1996 at least 40 percent of the number of units eligible to count toward the Low- and Moderate-Income Goal should qualify as low-or moderate-income, and at least 42 percent should qualify in 1997 and 1998. Actual performance, based on HUD's analysis, was as follows:

	1996	1997	1998
Fannie Mae:			
Units Eligible to Count Toward Goal	1,831,690	1,710,530	3,468,428
Low- and Moderate-Income Units	834,393	782,265	1,530,308
Percent Low- and Moderate-Income	45.6	45.7	44.1
Freddie Mac:			
Units Eligible to Count Toward Goal	1,293,424	1,173,915	2,654,850
Low- and Moderate-Income Units	532,219	499,590	1,137,660
Percent Low- and Moderate-Income	41.1	42.6	42.9

Thus, Fannie Mae surpassed the goals by 5.6 percentage points and 3.7 percentage points in 1996 in 1997, respectively, while Freddie Mac surpassed the goals by 1.1 and 0.6 percentage points. In 1998 Fannie Mae's performance fell by 1.6 percentage points, while Freddie Mac's reported performance continued to rise, by 0.3 percentage point.

The figures for goal performance presented above for 1993–97 differ from the corresponding figures presented by Fannie Mae and Freddie Mac in their Annual Housing Activity Reports to HUD by 0.2–0.3 percentage points in both 1996 and 1997, reflecting minor differences in application of counting rules.

Fannie Mae's performance on the Low- and Moderate-Income Goal jumped sharply in just one year, from 34.1 percent in 1993 to 45.1 percent in 1994, before tailing off to 42.8 percent in 1995. As indicated, it then stabilized at the 1994 level, just over 45 percent, in 1996 and 1997, before tailing off to 44.1 percent last year. Freddie Mac has shown more steady gains in performance on the Low- and Moderate-Income Goal, from 30.0 percent in 1993 to 38.0 percent in 1994 and 39.6 percent in 1995, before surpassing 41 percent in 1996 and 42 percent 1997, and rising to nearly 43 percent last year.

Fannie Mae's performance on the Low-and Moderate-Income Goal has surpassed Freddie Mac's in every year. However, Freddie Mac's 1998 performance represented a 44 percent increase over the 1993 level, exceeding the 29 percent increase for Fannie Mae. And Freddie Mac's performance was 97 percent of Fannie Mae's low- and moderate-income share in 1998, the highest ratio since the goals took effect in 1993. This improved performance of Freddie Mac is due mainly to its increased purchases of multifamily loans as it re-entered that market.

2. Comparisons With the Primary Mortgage Market

This section summarizes several analyses conducted by HUD on the extent to which the GSEs' loan purchases through 1998 mirror or depart from the patterns found in the primary mortgage market. The GSEs' affordable lending performance is also compared with the performance of major portfolio lenders such as commercial banks and thrift institutions. Dimensions of lending considered include the borrower income and underserved area dimensions covered by the three housing goals. Subsection *a* defines the primary mortgage market, subsection b addresses some questions that have recently

[151] A more detailed discussion of underwriting guidelines is contained in the analysis below regarding Factor 5, ''The GSEs' Ability to Lead the Industry.''

[152] The term ''affordable lending'' is used generically here to refer to lending for lower-income families and neighborhoods that have historically been underserved by the mortgage market.

[153] Throughout these appendices, the terms ''home loan'' or ''home mortgage'' will refer to a ''home purchase loan,'' as opposed to a ''refinance loan.''

arisen about HMDA's measurement of GSE activity, and subsections c–e present the findings.[154]

The market analysis in this section is based mainly on HMDA data for home purchase loans originated in metropolitan areas during the years 1992 to 1998. The HMDA data for 1998 was not released until August 1999 which gave HUD little time to incorporate that data fully into the analyses reported in these appendices; thus, the discussion below will often focus on the year 1997, with any differences from 1998 briefly noted. However, it should be emphasized that 1997 represents more typical mortgage market activity than the heavy refinancing year of 1998. Still, important shifts in mortgage funding that occurred during 1998 will be highlighted in order to offer as complete and updated analysis as possible.

a. Definition of Primary Market

First it is necessary to define what is meant by ''primary market'' in making these comparisons. In this section this term includes all mortgages on single-family owner-occupied properties that are originated in the conventional conforming market.[155] The source of this market information is the data provided by loan originators to the Federal Financial Institutions Examination Council (FFIEC) in accordance with the Home Mortgage Disclosure Act (HMDA).

There is a consensus that the following loans should be excluded from the HMDA data in defining the ''primary market'' for the sake of comparison with the GSEs'' purchases of goal-qualifying mortgages:

(i) Loans with a principal balance in excess of the loan limit for purchases by the GSEs—$240,000 for a 1-unit property in most parts of the United States in 1999.[156] Loans not in excess of this limit are referred to as ''conforming mortgages'' and larger loans are referred to as ''jumbo mortgages.''[157]

(ii) Loans which are backed by the Federal government, including those insured by the Federal Housing Administration and those guaranteed by the Department of Veterans Affairs, which are generally securitized by the Government National Mortgage Association (''Ginnie Mae''), as well as Rural Housing Loans, guaranteed by the Farmers Home Administration.[158] Generally, the GSEs do not receive credit on the housing goals for purchasing loans with Federal government backing. Loans without Federal government backing are referred to as ''conventional mortgages.''

Questions have arisen about whether loans on manufactured housing should be excluded when comparing the primary market with the GSEs. As discussed elsewhere in this Appendix, the GSEs have not played a significant role in the manufactured housing mortgage market in the past. However, the manufactured home mortgage market is changing in ways that make a higher percentage of such loans eligible for purchase by the GSEs, and the GSEs are looking for ways to increase their purchases of these loans. But more importantly, the manufactured housing sector is one of the most important providers of affordable housing, which makes it appropriate to include this sector in the market definition. For comparison purposes, data are presented for the primary market defined both to include and exclude mortgages originated by manufactured housing lenders. This issue is discussed further in Appendix D, which calculates the market shares for each housing goal.

Questions have also arisen about whether subprime loans should be excluded when comparing the primary market with the GSEs. Appendix D, which examines this issue in some detail, reports the effects of excluding the B&C portion of the subprime market from HUD's estimates of the goal-qualifying shares of the overall (combined owner and rental) mortgage market. As explained Section C.3.e of this appendix, the low-income and minority borrowers in the A-minus portion of the subprime market could benefit from the standardization and lower interest rates that typically accompany an active secondary market effort by the GSEs. A-minus loans are not nearly as risky as B&C loans and Freddie Mac has already starting purchasing A-minus loans, both on a flow basis and through negotiated transactions. Fannie Mae recently introduced a new program targeted at A-minus borrowers. Thus, HUD does not believe that A-minus loans should be excluded from the market definition.

Unfortunately, HMDA does not identify subprime loans, much less separating them into their A-minus and B&C components. There is evidence that many subprime loans are not reported to HMDA but there is no conclusive evidence on this issue.[159] Thus, it is not possible to exclude B&C loans from the comparisons reported below. However, HUD staff has identified HMDA reporters that primarily originate subprime loans.[160] The text below will report the effects of excluding data for these lenders from the primary market. The effects are minor mostly because the analysis below focuses on home purchase loans, which accounted for only twenty percent of the mortgages originated by the subprime lenders. During 1997 and 1998, the subprime market was primarily a refinance market.

b. Methods and Data for Measuring GSE Performance

Several issues have arisen about the methods and the data used to measure the GSEs' performance relative to the characteristics of the mortgages being originated in the primary market. While most of these issues will be discussed throughout the appendices, one issue, the reliability of HMDA data in measuring GSE performance, needs to addressed before presenting the market comparisons, which utilize the HMDA data. Fannie Mae has raised questions about HUD's reliance on HMDA data for measuring its performance.

There are two sources of loan-level information on the characteristics of mortgages purchased by the GSEs—the GSEs themselves and HMDA data. The GSEs provide detailed data on their mortgage purchases to HUD on an annual basis. As part of their annual HMDA reporting responsibilities, lenders are required to indicate whether their new mortgage originations or purchased loans are sold to Fannie Mae, Freddie Mac or some other entity. As discussed later, there have been numerous studies by HUD staff and other researchers that use the HMDA data to compare the borrower and neighborhood characteristics of loans sold to the GSEs with the characteristics of all loans originated in the market. The question is whether the HMDA data, which is widely available to the public, provides an accurate measure of GSE performance, as compared with the GSEs' own data.[161] Fannie Mae has argued that HMDA data have understated its past performance, where performance is defined as the percentage of Fannie Mae's mortgage purchases accounted for by one of the goal-qualifying categories such as underserved areas. As explained below, HMDA provided reliable national-level information through 1997 on the GSEs' purchases of newly-originated loans but not on their purchases of prior-year loans. In 1998, HMDA data differed from data that the GSEs reported to HUD on their purchases of newly-originated loans.

In any given calendar year, the GSEs can purchase mortgages originated in that calendar year or mortgages originated in a

[154] Subsections *b–d* of this section focus on the single-family mortgage market for home purchase loans, which is the relevant market for analysis of homeownership opportunities. Subsection e extends the analysis to include single-family refinance loans. For a discussion of past performance in the multifamily mortgage market, see Section D of this Appendix.

[155] Thus, the market definition in this section is narrower than the data presented earlier in Section C and Tables A.1a and A.1b, which covered all loans (both government and conventional) less than or equal to the conforming loan limit. In this section, only the GSEs' purchases of conventional conforming loans are considered.

[156] Higher limits apply for loans on 2-, 3-, and 4-unit properties and for properties in Alaska, Hawaii, Guam, and the Virgin Islands.

[157] ''Jumbo mortgages'' in any given year might become eligible for purchase by the GSEs in later years as the loan limits rise and the outstanding principal balance is reduced.

[158] However, in analyzing the provision of mortgage finance more generally, it is often appropriate to include government loans; see Tables A.1a, A.1b and A.2 in Section C.3.b.

[159] *Fair Lending/CRA Compass,* (June 1999), p. 3.

[160] Randall M. Scheessele developed a list of 42 subprime lenders that was used by HUD and others in analyzing HMDA data through 1997. In 1998, Scheessele updated the list to 200 subprime lenders. For analysis comparing various lists of subprime lenders, see Appendix D of Scheessele (1999), op. cit. That paper also discusses Scheessele's lists of manufactured housing lenders.

[161] See Randall M. Scheessele, *HMDA Coverage of the Mortgage Market*, Housing Finance Working Paper HF–007, Office of Policy Development and Research, Department of Housing and Urban Development, July 1998. Scheessele reports that HMDA data covered 81.6 percent of the loans acquired by Fannie Mae and Freddie Mac in 1996. The main reason for the under-reporting of GSE acquisitions is a few large lenders failed to report the sale of a significant portion of their loan originations to the GSEs. Also see Jim Berkovec and Peter Zorn. ''Measuring the Market: Easier Said than Done,'' *Secondary Mortgage Markets.* McLean VA: Freddie Mac (Winter 1996), pp. 18–21.

prior calendar year. In 1997, purchases of prior-year mortgages accounted for 30 percent of the single-family units financed by Fannie Mae's mortgage purchases and 20 percent of the single-family units financed by Freddie Mac's mortgage purchases.[162] HMDA data provides information mainly on newly-originated mortgages that are sold to the GSEs—that is, HMDA data on loans sold to the GSEs will not include many of their purchases of prior-year loans.[163] The implications of this for measuring GSE performance can be seen in Tables A.3 and A.4a.[164]

Table A.3 summarizes affordable lending by the GSEs, depositories and the conforming market for the six-year period between 1993 and 1998 and for the borrower and census tract characteristics covered by the housing goals. The GSE percentages presented in Table A.3 are derived from the GSEs' own data that they provide to HUD, while the depository and market percentages are taken from HMDA data. Annual data on the borrower and census tract characteristics of GSE purchases are provided in Table A.4a. According to Fannie Mae's own data, 9.9 percent of its purchases during 1997 were loans for very low-income borrowers (see Table A.4a). According to HMDA data (also reported in Table A.4a), only 8.8 percent of Fannie Mae's purchases were loans for very low-income borrowers.[165] Thus, in this case the HMDA data underestimate the share of Fannie Mae's mortgage purchases for very low-income borrowers.

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[162] Since 1993, the GSEs have increased their purchases of seasoned loans. See Paul B. Manchester, *Characteristics of Mortgages Purchased by Fannie Mae and Freddie Mac: 1996–1997 Update,* Housing Finance Working Paper HF–006, Office of Policy Development and Research, Department of Housing and Urban Development, (August 1998), p.17.

[163] For a discussion of the impact of the GSEs' seasoned mortgage purchases on HMDA data coverage, see Scheessele (1998), op. cit.

[164] Table A.4b, which reports similar GSE information as Table A.4a, provides several alternative estimates of the conventional conforming market depending on the treatment of small loans, manufactured housing loans, and subprime loans. The data in Table A.4b will be referenced throughout the discussion.

[165] Any HMDA data reported in the appendices on borrower incomes excludes loans where the loan-to-borrower-income ratio is greater than six.

Table A.3

GSE Purchases and Single-Family Lending in Metropolitan Areas Goal-Qualifying Home Purchase Mortgages, 1993-1998

Borrower and Tract Characteristics	Fannie Mae	Freddie Mac	Depository Portfolio	Conforming Market Total	Conforming Market W/O Mfg Homes
Very Low-Income					
1993-1998	9.2 %	7.6 %	14.5 %	12.4 %	10.7 %
1993-1995	8.1	6.6	14.5	11.6	10.3
1996-1998	10.1	8.4	14.5	13.0	11.1
Special Affordable					
1993-1998	11.0	9.0	17.0	14.6	12.7
1993-1995	9.9	7.9	17.1	13.8	12.3
1996-1998	11.9	9.8	16.7	15.3	13.1
Less than Area Median Income					
1993-1998	37.4	33.8	43.6	41.8	39.4
1993-1995	36.3	32.4	44.1	40.8	39.0
1996-1998	38.4	34.9	43.1	42.6	39.6
Underserved Area					
1993-1998	22.9	19.7	26.3	24.5	23.4
1993-1995	22.9	19.4	26.8	24.0	23.2
1996-1998	22.9	19.9	25.8	24.9	23.5

Source: The Fannie Mae and Freddie Mac data include information on all their purchases of home loans and are from the loan-level data that they provide to HUD. All mortgages are conventional conforming mortgages. The Depository Portfolio and Conforming Market data are from HMDA; loans with a loan-to-income ratio greater than six are excluded from the borrower income calculations. The "Conforming Market W/O Mfg Homes" data for borrower income exclude loans less than $15,000 and loans from lenders that primarily originate manufactured housing loans. Special affordable includes very low-income borrowers and low-income borrowers in low-income census tracts. Data with missing values are excluded.

Table A.4a

Annual Trends in GSE Purchases and Single-Family Lending in Metropolitan Areas
Goal-Qualifying Home Purchase Mortgages, 1992-1998

	Fannie Mae Data			HMDA Data for Fannie Mae	Freddie Mac Data			HMDA Data for Freddie Mac	Conforming Market	
Very Low-Income	Prior Yr	Current Yr	All		Prior Yr	Current Yr	All		All	W/O Mfg Homes
1992				5.2 %				5.3 %	8.7 %	7.6 %
1993	6.5 %	6.7 %	6.7 %	7.4	4.2 %	6.2 %	6.0 %	6.6	10.8	9.6
1994	7.9	8.9	8.7	9.4	6.4	6.8	6.7	7.8	11.9	10.7
1995	11.2	8.9	9.3	8.5	7.7	6.8	7.0	7.5	12.0	10.5
1996	8.8	8.4	8.5	8.7	7.2	7.4	7.4	8.0	12.7	10.8
1997	13.4	8.7	9.9	8.8	7.5	7.6	7.6	8.0	13.0	11.0
1998	15.1	10.5	11.4	9.2	10.1	9.8	9.9	8.4	13.3	11.4
Special Affordable										
1992				6.3				6.5	10.4	9.3
1993	8.2	8.1	8.1	8.8	5.1	7.4	7.2	7.8	12.6	11.3
1994	9.5	10.8	10.6	11.4	7.6	8.1	8.0	9.2	14.1	12.8
1995	13.2	10.8	11.2	10.5	9.1	8.2	8.3	8.9	14.4	12.7
1996	10.6	10.2	10.3	10.5	8.4	8.7	8.7	9.4	15.0	12.8
1997	16.0	10.2	11.7	10.5	9.2	9.0	9.0	9.4	15.3	13.0
1998	17.9	12.1	13.2	10.7	11.8	11.2	11.3	9.7	15.5	13.4
Less Than Area Median Income										
1992				29.2				28.7	34.4	33.0
1993	30.4	33.5	33.2	35.0	24.9	32.1	31.6	32.3	38.9	37.4
1994	35.6	38.9	38.3	40.1	31.5	33.6	33.2	35.6	41.8	40.3
1995	38.6	37.7	37.8	37.1	33.6	32.1	32.4	33.9	41.4	39.2
1996	35.5	36.8	36.5	37.7	31.8	33.5	33.2	35.3	42.2	39.4
1997	41.1	36.4	37.6	37.5	33.7	34.2	34.1	35.4	42.5	39.6
1998	45.3	39.2	40.4	38.1	36.1	37.0	36.9	36.2	43.0	40.4
Underserved Areas										
1992				18.3				18.6	22.2	21.5
1993	23.8	19.4	20.3	18.2	19.5	18.2	18.4	17.6	21.9	21.1
1994	26.6	23.6	24.3	22.5	21.0	19.4	19.7	19.2	24.4	23.5
1995	27.4	23.9	24.7	22.8	22.6	19.4	20.1	19.1	25.5	24.2
1996	23.4	21.9	22.3	21.6	22.3	19.1	19.7	19.0	25.0	23.1
1997	30.1	20.8	23.5	21.0	22.2	19.3	19.9	18.6	25.2	23.3
1998	28.4	21.0	22.9	19.6	22.0	19.5	20.0	17.4	24.6	22.8

Source: The Fannie Mae and Freddie Mac data for their purchases of "Prior Year" mortgages, "Current Year" mortgages, and "All" mortgages are from the loan-level data that they provide to HUD. All mortgages are conventional conforming home purchase mortgages. The "HMDA Data" are those mortgages that HMDA identifies as being sold to the GSEs.The Conforming Market data are from HMDA; loans with a loan-to-income-ratio greater than six are excluded from the borrower income calculations. The "Conforming Market W/O Mfg Homes" data exclude loans less than $15,000 and loans from lenders that primarily originate manufactured housing loans. Special affordable includes very low-income borrowers and low-income borrowers living in low-income census tracts. Data with missing values are excluded.

Table A.4b

Annual Trends in GSE Purchases and Single-Family Lending in Metropolitan Areas
Goal-Qualifying Home Purchase Mortgages, 1992-1998
Various Market Definitions

			Conventional Conforming Market Originations					
Very Low-Income	Fannie Mae Purchases	Freddie Mac Purchases	Total Market	W/O Mfg Loans Only	W/O Loans Less Than $15K	W/O Mfg and Less Than $15K Loans	W/O Subprime Loans	W/O Subprime and Less Than $15K Loans
1992	5.2 %	5.3 %	8.7 %	8.3 %	7.9 %	7.6 %	8.7% %	7.9 %
1993	6.7	6.0	10.8	10.2	10.0	9.6	10.8%	10.0
1994	8.7	6.7	11.9	11.2	11.2	10.7	11.9%	11.2
1995	9.3	7.0	12.0	11.0	11.3	10.5	12.0%	11.2
1996	8.5	7.4	12.7	11.2	12.0	10.8	12.7%	12.0
1997	9.9	7.6	13.0	11.4	12.4	11.0	13.0%	12.3
1998	11.4	9.9	13.3	11.7	12.8	11.4	13.1%	12.6
Special Affordable								
1992	6.3	6.5	10.4	10.0	9.5	9.3	10.4	9.5
1993	8.1	7.2	12.6	12.0	11.8	11.3	12.6	11.8
1994	10.6	8.0	14.1	13.4	13.4	12.8	14.1	13.3
1995	11.2	8.3	14.4	13.3	13.6	12.7	14.4	13.6
1996	10.3	8.7	15.0	13.3	14.2	12.8	15.0	14.2
1997	11.7	9.0	15.3	13.5	14.6	13.0	15.2	14.5
1998	13.2	11.3	15.5	13.7	15.0	13.4	15.2	14.7
Less Than Area Median Income								
1992	29.2	28.7	34.4	33.8	33.4	33.0	34.4	33.4
1993	33.2	31.6	38.9	38.0	38.1	37.4	38.9	38.0
1994	38.3	33.2	41.8	40.8	41.1	40.3	41.8	41.1
1995	37.8	32.4	41.4	39.8	40.5	39.2	41.3	40.3
1996	36.5	33.2	42.2	39.9	41.1	39.4	42.2	41.4
1997	37.6	34.1	42.5	40.1	41.8	39.6	42.4	41.6
1998	40.4	36.9	43.0	40.7	42.5	40.4	42.6	42.1
Underserved Areas								
1992	18.3	18.6	22.2	21.9	21.7	21.5	22.1	21.6
1993	20.3	18.4	21.9	21.5	21.5	21.1	21.8	21.3
1994	24.3	19.7	24.4	23.9	24.0	23.5	24.3	23.8
1995	24.7	20.1	25.5	24.6	25.0	24.2	25.3	24.9
1996	22.3	19.7	25.0	23.5	24.5	23.1	24.8	24.4
1997	23.5	19.9	25.2	23.7	24.8	23.3	24.7	24.3
1998	22.9	20.0	24.6	23.1	24.3	22.8	23.7	23.4

Source: The Fannie Mae and Freddie Mac percentages are based on the loan-level data that they provide to HUD. All mortgages are conventional conforming home purchase mortgages. The Conforming Market data are from HMDA; loans with a loan-to-income-ratio greater than six are excluded from all borrower income calculations. See the text for an explanation of the adjustments for manufactured housing (mfg) and subprime loans. Special affordable includes very low-income borrowers and low-income borrowers living in low-income census tracts. Data with missing values are excluded.

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The reason that HMDA data underestimate those purchases can be seen by disaggregating Fannie Mae's purchases during 1997 into their ''Prior Year'' and ''Current Year'' components. Table A.4a shows that the overall figure of 9.9 percent for very low-income borrowers is a weighted average of 13.4 percent for Fannie Mae's purchases during 1997 of ''Prior Year'' mortgages and 8.7 percent for its purchases of ''Current Year'' purchases. HMDA data report that 8.8 percent of Fannie Mae's 1997 purchases consisted of loans to very low-income borrowers is based mainly on newly-mortgaged (current-year originations) loans that lenders report they sold to Fannie Mae. Therefore, the HMDA data figure is similar in concept to the ''Current Year'' percentage from the GSEs' own data. As Table A.4a shows, HMDA data and ''Current Year'' figures are practically the same in this case (about nine percent). Thus, the relatively large share of very low-income mortgages in Fannie Mae's 1997 purchases of ''Prior Year'' mortgages is the primary reason why Fannie Mae's own data show an overall (both prior-year and current-year) percentage of very low-income loans that is higher than that reported in HMDA data.

A review of the data in Table A.4a yields the following insights about the reliability of HMDA data at the national level for metropolitan areas. First, comparing the HMDA data on GSE purchases with the GSE ''Current Year'' data suggests that HMDA data provided reasonable estimates of the GSEs' current year purchases through 1997.[166] Second, the HMDA data percentages through 1997 are actually rather close to Freddie Mac's *overall* percentages because Freddie Mac's prior-year purchases often resembled their current-year originations. Fannie Mae, on the other hand, was more apt to purchase seasoned loans with a relatively high percentage of low-income loans, which means that HMDA data was more likely to underestimate its overall performance. However, this underestimation of the share of Fannie Mae's goal-qualifying loans in the HMDA data first arose in 1997, when Fannie Mae's purchases of prior-year loans were particularly targeted to affordable lending groups. For the years 1993 to 1996, Fannie Mae's prior-year loan purchases more closely resembled their current-year originations.

Third, the 1998 data show that even the GSEs' ''Current Year'' data differ from the HMDA-reported data on GSE purchases. For example, special affordable loans accounted for 12.1 percent of Fannie Mae's current-year purchases in 1998 compared with only 10.7 percent of Fannie Mae's special affordable purchases as reported by HMDA. Similarly, underserved areas accounted for 21.0 percent of Fannie Mae's current-year purchases compared with only 19.6 percent of Fannie Mae's underserved area purchases as reported by HMDA. The same patterns exist for Freddie Mac's 1998 data for the special affordable and underserved area categories. Thus, 1998 HMDA data do not provide a reliable estimate at the national level of the GSEs' purchases of current-year (newly-mortgaged) loans. More research on this issue is needed.

The next section compares the GSE performance with that of the overall market. The fact that the GSE data includes prior-year as well as current-year loans, while the market data includes only current-year originations, means that the GSE-versus-market comparisons are defined somewhat inconsistently for any particular calendar year. Each year, the GSEs have newly-originated affordable loans available for purchase, but they can also purchase loans from a large stock of seasoned loans currently being held in the portfolios of depository lenders. Depository lenders have originated a large number of CRA-type loans over the past six years and many of them remain on their books. In fact, HUD has encouraged the GSEs to purchase seasoned, CRA-type loans that have demonstrated their creditworthiness. One method for making the data more consistent is to aggregate the data over several years, instead of focusing on annual data. This provides a clearer picture of the types of loans that have been originated and are available for purchase by the GSEs. This approach is taken in Table A.3.

c. Affordable Lending by the GSEs and the Primary Market

Table A.3 summarizes goal-qualifying lending by the GSEs, depositories and the conforming market for the six-year period between 1993 and 1998 and for the more recent 1996–98 period, which covers the period since the most recent housing goals have been in effect. As noted above, the data are aggregated over time to provide a clearer picture of how the GSEs' purchases of both current-year and prior-year loans compare with the types of mortgages that have been originated during the past few years. All of the data are for home purchase mortgages in metropolitan areas. Several points stand out concerning the affordable lending performance of Freddie Mac and Fannie Mae.

Freddie Mac. The data in Table A.3 show that Freddie Mac has substantially lagged both Fannie Mae and the primary market in funding affordable home loans. Between 1993 and 1998, 7.6 percent of Freddie Mac's mortgage purchases were for very low-income borrowers, compared with 9.2 percent of Fannie Mae's purchases, 14.5 percent of loans originated and retained by depositories, and 12.4 percent of loans originated in the conforming market (or 10.7 percent if manufactured home loans are excluded from the conforming market definition).[167] As shown by the annual data reported in Table A.4a, Freddie Mac did improve its funding of very low-income borrowers during this period, from 6.0 percent in 1993 to 7.6 percent in 1997, and then to 9.9 percent in 1998. However, Freddie Mac has not made as much progress as Fannie Mae (discussed below) in closing the gap between its performance and that of the overall market. During the 1996–98 period in which the new goals have been in effect, the ratio of Freddie Mac's average performance (8.4 percent) to that of the overall market (13.0 percent) was only 0.65; this ''Freddie-Mac-to-market'' ratio remains at only 0.76 even when manufactured homes are excluded from the market definition.

A similar conclusion about Freddie Mac's performance can be drawn for the other goal-qualifying categories presented in Tables A.3 and A.4a: Freddie Mac's performance has remained well below the market since 1993. For example, during the 1996–98 period when the new housing goals have been in effect, mortgages financing properties in underserved areas accounted for only 19.9 percent of Freddie Mac's purchases, compared with 22.9 percent of the loans purchased by Fannie Mae and 24.9 percent of the mortgages originated in the conforming market. Similarly, mortgages originated for low- and moderate-income borrowers represented 34.9 percent of Freddie Mac's purchases during this period, compared with 42.6 percent of all mortgages originated in the conforming market.

One encouraging sign for Freddie Mac is that the borrower-income categories showed a rather large increase between 1997 and 1998. Special affordable (low-mod) loans increased from 9.0 (34.1) percent in 1997 to 11.3 (36.9) percent in 1998. The reasons for this increase require further study, but certainly, an interesting question going forward is whether Freddie Mac can continue this 1997–98 pattern and thus further close its performance gap relative to the overall market. It is somewhat surprising that Freddie Mac's purchases of home loans in underserved areas did not increase (in percentage terms) between 1997 and 1998; as shown in Table A.4a, the underserved areas share of Freddie Mac's home loan purchases has remained constant at approximately 20 percent since 1994.

Fannie Mae. The data in Table A.3 show that Fannie Mae has also lagged depositories and the primary market in the funding of homes for lower-income borrowers and underserved neighborhoods. Between 1993 and 1998, 37.4 percent of Fannie Mae's purchases were for low- and moderate-income borrowers, compared with 43.6 percent of loans originated and retained by depositories and with 41.8 percent of loans originated in the primary market. Over the more recent 1996–98 period, 22.9 percent of Fannie Mae's purchases financed properties in underserved neighborhoods, compared with 25.8 percent of loans originated by depositories and 24.9 percent of loans

[166] For example, in 1997 Fannie Mae reported that 20.8 percent of the loans they purchased, that were originated during 1997, were for properties in underserved area. HMDA reports that 21.0 percent of the loans sold to Fannie Mae during 1997 were for properties in underserved areas. The corresponding numbers for Freddie Mac, in 1997, are 19.3 percent reported by them and 18.6 percent reported by HMDA. During 1997, both Fannie Mae and HMDA reported that approximately 37 percent of the ''current year'' loans purchased by Fannie Mae were for low- and moderate-income borrowers. Freddie Mac reported that 34.2 percent of the current year loans they purchased were for low- and moderate-income borrowers, compared to the 35.4 low-mod percent that HMDA reported as sold to Freddie Mac.

[167] The borrower income distributions in Tables A.3 and A.4a for the ''market without manufactured housing'' exclude loans less than $15,000 as well as all loans originated by lenders that primarily originate manufactured housing loans. See Table A.4b for market definitions that show the separate effects of excluding small loans and manufactured housing loans.

originated in the conventional conforming market.

However, Fannie Mae's affordable lending performance can be distinguished from Freddie Mac's. First, Fannie Mae has performed much better than Freddie Mac on every goal-category examined here. For example, home loans for special affordable loans accounted for 13.2 percent of Fannie Mae's purchases in 1998, compared with only 11.3 percent of Freddie Mac's purchases (see Table A.4a). In that same year, 22.9 percent of Fannie Mae's purchases were in underserved census tracts, compared with only 20.0 percent of Freddie Mac's purchases.

Second, Fannie Mae has improved its performance over the past six years and has made more progress than Freddie Mac in closing the gap between its performance and the market's performance on the goal-qualifying categories examined here. In fact, Fannie Mae's performance is now close to that of the primary market for some important components of affordable lending. For example, in 1992, very low-income loans accounted for 5.2 percent of Fannie Mae's purchases and 8.7 percent of all loans originated in the conforming market, giving a ''Fannie Mae-to-market'' ratio of 0.60. By 1998, this ratio had risen to 0.86, as very low-income loans had increased to 11.4 percent of Fannie Mae's purchases and to 13.3 percent of market originations.

A similar trend in market ratios can be observed for Fannie Mae on the underserved areas category. Fannie Mae has been improving its performance relative to the market; for example, the ''Fannie-Mae-to-market'' ratio for underserved areas increased from 0.82 in 1992 to 0.93 in 1998. This improved performance relative to the overall market by Fannie Mae is in sharp contrast to Freddie Mac's record—the ''Freddie-Mac-to-market'' ratio for underserved areas actually declined, from 0.84 in 1992 to 0.81 in 1998. As a result, Fannie Mae has been approaching the home loan market in underserved areas while Freddie Mac has been losing ground relative to overall primary market.

B&C Home Purchase Loans. As explained earlier, HMDA does not identify subprime loans, much less separate them into their A-minus and B&C components. Randall Scheessele at HUD has identified 200 HMDA reporters that primarily originate subprime loans and probably accounted for at least half of the subprime market during 1998.[168] As shown in Table A.4b, excluding the home purchase loans originated by these lenders from the primary market data has only minor effects on the goal-qualifying shares of the market. The average market percentages for 1998 are reduced as follows: low- and moderate-income (43.0 to 42.6 percent); special affordable (15.5 to 15.2 percent); and underserved areas (24.6 to 23.7 percent). As explained earlier, the effects are minor mostly because this analysis focuses on home purchase loans, which accounted for only 20 percent of the mortgages originated by these 200 subprime lenders— the subprime market has been mainly a refinance market.

d. Prior-Year Loans

An important source of the differential in affordable lending between Fannie Mae and Freddie Mac concerns the purchase of prior-year loans. As shown in Table A.4a, the prior-year mortgages that Fannie Mae has been recently purchasing are much more likely to be loans for lower-income families and underserved areas than the newly-originated mortgages that they have been purchasing. For example, 30.1 percent of Fannie Mae's 1997 purchases of prior-year mortgages were loans financing properties in underserved areas, compared with 20.8 percent of its purchases of newly-originated mortgages. These purchases of prior-year mortgages are one reason that Fannie Mae improved its performance relative to the primary market, which includes only newly-originated mortgages, in 1997. Sixteen percent of its prior-year mortgages qualified for the Special Affordable Goal, compared with only 10.2 percent of its purchases of newly-originated loans. The same patterns are exhibited by the 1998 data. For example, 17.9 percent of Fannie Mae's prior-year purchases during 1998 qualified for the Special Affordable Goal, compared with only 12.1 percent of its 1998 purchases of newly-originated loans. Fannie Mae seems to be purchasing affordable loans that were originated by portfolio lenders in previous years.

Freddie Mac, on the other hand, does not seem to be pursuing such a strategy, or at least not to the same degree as Fannie Mae. In 1997 and 1998, Freddie Mac's purchases of prior-year mortgages and its purchases of newly-originated mortgages had similar percentages of special affordable and low- and moderate-income borrowers. As Table A.4a shows, there is a small differential between Freddie Mac's prior-year and newly-originated mortgages for the underserved areas category but it is much smaller than the differential for Fannie Mae. Thus, Freddie Mac's purchases of prior-year mortgages are less likely to qualify for the housing goals, and this is one reason Freddie Mac's overall affordable lending performance is below Fannie Mae's.

e. GSE Purchases of Total (Home Purchase and Refinance) Loans

The above sections have examined the GSEs' acquisitions of home purchase loans, which is appropriate given the importance of the GSEs for expanding homeownership opportunities. To provide a complete picture of the GSEs' mortgage purchases in metropolitan areas, this section briefly considers the GSEs' purchases of all single-family-owner mortgages, including both home purchase loans and refinance loans.[169] Shifting the analysis to consider all (home purchase and refinance) mortgages does not change the basic finding that both GSEs lag the primary market in serving low-income borrowers and underserved neighborhoods. For example, in 1998 underserved areas accounted for 21.2 (20.9) percent of Fannie Mae's (Freddie Mac's) purchases, compared to approximately 25.0 percent for both depository institutions and the overall primary market. Similarly, special affordable loans accounted for 11.1 (10.9) percent of Fannie Mae's (Freddie Mac's) purchases of single-family-owner loans, compared to 14.9 percent for depository institutions and 14.3 percent for the overall primary market.

There are two changes when one shifts the analysis from only home purchase loans to include all mortgages—one concerning the relative performance of Fannie Mae and Freddie Mac and one concerning the impact of subprime mortgages on the goals-qualifying percentages. These are discussed next.

Fannie Mae versus Freddie Mac Performance. As indicated by the above percentages, the borrower-income comparisons between Fannie Mae and Freddie Mac change when the analysis switches from their acquisitions of only home purchase loans to their acquisitions of both home purchase and refinance loans. Consider the special affordable income category for 1997 and 1998. As shown in Table A.4a, special affordable loans accounted for a much higher percentage of Fannie Mae's acquisitions of home purchase loans than of Freddie Mac's in each of these two years. Similarly, in 1997, special affordable loans accounted for 11.5 percent of Fannie Mae's total (both home purchase and refinance) purchases, compared with 9.9 percent of Freddie Mac's total purchases. However, between 1997 and 1998, the special affordable percentage of Freddie Mac's total purchases increased from 9.9 percent to 10.9 percent, while the corresponding percentage for Fannie Mae actually declined from 11.5 percent to 11.1 percent. Thus, in 1998, Freddie Mac's overall special affordable percentage (10.9 percent) was approximately the same as Fannie Mae's (11.1 percent).

Further analysis shows that this improvement of Freddie Mac relative to Fannie Mae was due to Freddie Mac's better performance on refinance loans during 1998. The special affordable percentage of Fannie Mae's refinance loans fell from 11.1 percent in 1997 to 9.7 percent in 1998, which is not surprising given that middle- and upper-income borrowers typically dominate heavy refinance markets such as 1998. But the special affordable percentage of Freddie Mac's refinance loans did not drop very much, falling from 11.3 percent in 1997 to 10.7 percent in 1998.[170] Thus, Freddie Mac's

[168] See Scheessele (1999), op. cit. As explained in Appendix D of Scheessele's paper, the number of subprime lenders varies by year; the 200 figure cited in the text applies to 1998. The number of loans identified as subprime in these appendices is the same as reported by Scheessele in Table D.2b of his paper.

[169] Table A.1b in Section C.3.b provides several comparisons of the GSE's total purchases with primary market originations. As shown there, many of the same patterns described above for home purchase loans can be seen in the data for the GSEs' total purchases.

[170] In general, the HMDA-reported affordability percentages for GSE purchases of refinance loans have matched the corresponding GSE-reported percentages. For example, in 1997, both GSEs reported to HUD that special affordable loans accounted for about 11 percent of their purchases of refinance loans in metropolitan areas; HMDA reported the same percentage for each GSE. Similarly, in 1998, both HMDA and Fannie Mae

Continued

higher special affordable percentage (10.7 percent versus 9.7 percent for Fannie Mae) on refinance loans in 1998 enabled Freddie Mac to close the gap between its overall single-family performance and that of Fannie Mae.

The GSEs' underserved areas percentages followed a somewhat similar pattern as their special affordable percentages between 1997 and 1998. In 1997, Freddie Mac's underserved area percentage (21.6 percent) for total purchases was significantly less than Fannie Mae's (23.6), but in 1998, Freddie Mac's underserved areas percentage (20.9) was about the same as Fannie Mae's (21.2 percent). This convergence was mainly due to a sharper decline in Fannie Mae's underserved area percentage for refinance loans between 1997 and 1998.

B&C Loans. Section E.2.c showed that the estimates for the home purchase market did not change much when loans for subprime lenders were excluded from the HMDA analysis; the reason was that these lenders operate primarily in the refinance market. In this section's analysis of the total market (including refinance loans), one would expect the treatment of subprime lenders to significantly affect the market estimates. For the year 1997, excluding subprime lenders reduced the goal-qualifying shares of the total market as follows: special affordable (from 16.3 to 14.8 percent); low-mod (from 43.6 to 41.9 percent); and underserved areas (from 27.8 to 25.5 percent). Similarly, for the year 1998, excluding 200 subprime lenders reduced the goal-qualifying shares of the total market as follows: special affordable (from 14.3 to 12.7 percent); low-mod (from 41.0 to 39.0 percent); and underserved areas (from 24.8 to 22.6 percent). As discussed earlier, the GSEs have been entering the subprime market over the past two years, particularly the A-minus portion of that market. Industry observers estimate that A-minus loans account for at least half of all subprime loans while the more risky B&C loans account for the remaining half. Thus, one proxy for excluding B&C loans originated by the 200 specialized lenders from the overall market benchmark might be to reduce the goal-qualifying percentages from the HMDA data by half the above differentials; accounting for B&C loans in this manner would reduce the 1998 HMDA-reported goal-qualifying shares of the total conforming market as follows: special affordable (from 14.3 to 13.5 percent); low-mod (from 41.0 to 40.0 percent); and underserved areas (from 24.8 to 23.7 percent). However, as discussed in Appendix D, much uncertainty exists about the size of the subprime market and its different components. More data and research are obviously needed on this growing sector of the mortgage market.[171]

f. GSE Mortgage Purchases in Individual Metropolitan Areas

While the above analyses, as well as earlier studies,[172] concentrate on national-level data, it is also instructive to compare the GSEs' purchases of mortgages in individual metropolitan areas (*e.g. MSAs*). In this section, the GSEs' purchases of single-family owner-occupied home purchase loans are compared to the market in individual MSAs.[173] To do so, total primary market mortgage originations from two years, 1995 and 1996, are summed up by year, by MSA, and for GSE purchases of these loans. The GSEs' purchases of 1995 originations include all 1995 originations purchased by each GSE between 1995 and 1998 from 324 MSAs. For their purchases of 1996 originations, all 1996 originations purchased between 1996 and 1998 from 326 MSAs are included. This should cover 90 to 95 percent of the 1995 and 1996 originated loans that will be purchased by the GSEs, thus making the GSE data comparable to HMDA market data. The loans are then grouped by the GSE housing goal categories for which they qualify and the ratio of the housing goal category originations to total originations in each MSA is calculated for each GSE and the market. The GSE-to-market ratio is then calculated by dividing each GSE ratio by the corresponding market ratio. For example, if it is calculated that one of the GSEs' purchases of Low- and Moderate-Income loans in a particular MSA is 47 percent of their overall purchases in that MSA, while 49 percent of all originations in that MSA are Low-Mod, then that GSE-to-market ratio is 47/49 (or 0.96).

Table A.5 shows the performance of the GSEs by MSA for 1995 and 1996 originations of home purchase loans. A GSE's performance is determined to be lagging the market if the ratio of the GSE housing goal loan purchases to their overall purchases is less than 99 percent of that same ratio for the market.[174] For the above example, that GSE is considered to be lagging the market. These results are then summarized in Table A.5, which reports the number of MSAs in which each GSE under-performs the market with respect to the housing goal categories.

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reported that special affordable loans accounted for 9.7 percent of Fannie Mae's refinance purchases. However, in 1998, the Freddie-Mac-reported special affordable percentage (10.7 percent) for its refinance loans was significantly higher than the corresponding percentage (9.5 percent) reported in the HMDA data. The reasons for this discrepancy require further study.

[171] The Mortgage Information Corporation (MIC) has recently started publishing origination and default performance data for the subprime market. For an explanation of their data and some early findings, see Dan Feshbach and Michael Simpson, ''Tools for Boosting Portfolio Performance'', *Mortgage Banking: The Magazine of Real Estate Finance,* (October 1999), pp. 137–150.

[172] For example, see Bunce and Scheessele (1996 and 1998), op. cit.

[173] This analysis is limited to the conventional conforming market.

[174] This analysis was also conducted where the ''lag'' determination is made at 95 percent. The results are consistent with those shown in Table A.5. For example, at the 95 percent cutoff, Fannie Mae lagged the market in 275 MSAs (85 percent) in the purchase of 1995 originated Special Affordable category loans. Likewise, Freddie Mac lagged the market in 320 MSAs (99 percent).

Table A.5

Analysis of GSEs' Purchases Across MSAs by Housing Goal Category

1995 Originations

	Underserved Areas		Low-Mod Income		Special Affordable	
Number of MSAs Analyzed	324	100.0%	324	100.0%	324	100.0%
Fannie Mae lags the Market	239	73.8%	264	81.5%	287	88.6%
Freddie Mac lags the Market	300	92.6%	319	98.5%	321	99.1%
Fannie Mae lags Freddie Mac	65	20.1%	26	8.0%	37	11.4%
Freddie Mac lags Fannie Mae	245	75.6%	295	91.0%	281	86.7%

1996 Originations

	Underserved Areas		Low-Mod Income		Special Affordable	
Number of MSAs Analyzed	326	100.0%	326	100.0%	326	100.0%
Fannie Mae lags the Market	266	81.6%	285	87.4%	295	90.5%
Freddie Mac lags the Market	297	91.1%	323	99.1%	323	99.1%
Fannie Mae lags Freddie Mac	95	29.1%	54	16.6%	57	17.5%
Freddie Mac lags Fannie Mae	220	67.5%	261	80.1%	259	79.4%

Source: Fannie Mae and Freddie Mac data include information on all of their purchases for the years 1995 through 1998 and are from the loan-level data they provide to HUD. The conforming market data are originations as reported by HMDA; loans with a loan-to-income ratio greater than six are excluded from Low-Mod Income and Special Affordable categories.

Notes: The GSE loans in this analysis include all single-family owner-occupied conventional conforming home purchase mortgages in metropolitan areas (as defined by OMB in 1995 or 1996) purchased by the GSE between 1995 (1996) and 1998 but were originated during 1995 (1996).

A GSE is determined to lag the market (other GSE) if the ratio of its category share to the market (other GSE) category share is less than 99%.

Exceptions to the "lag" determination:

When there are less than 5 reported category loans in the HMDA data and less than 5 category loans from only one of the GSEs, that GSE will count as approximating the market regardless of calculated ratio.

When there are more than 5 reported category loans in the HMDA data and less than 5 category loans from each of the GSEs, it will count as Fannie Mae approximating Freddie Mac regardless of calculated ratio.

For 1995 originations, Fannie Mae:

(i) Lagged the market in 239 (74 percent) of the MSAs in the purchase of Underserved Area loans,

(ii) Lagged the market in 264 (82 percent) of the MSAs in the purchase of Low- and Moderate-Income loans, and

(iii) Lagged the market in 287 (89 percent) of the MSAs in the purchase of Special Affordable loans.

Freddie Mac lagged the market to an even greater extent in 1995. Specifically, the market outperformed Freddie Mac in:

(i) 300 (93 percent) of the MSAs in the purchase of Underserved Area loans,

(ii) 319 (99 percent) of the MSAs in the purchase of Low- and Moderate-Income loans, and

(iii) 321 (99 percent) of the MSAs in the purchase of Special Affordable loans.

Thus Freddie Mac was behind Fannie Mae in at least three-quarters of the MSAs for all three goal categories. As shown in Table A.5, the results for loans originated in 1996 are similar.

g. High Down Payments on GSEs' Lower-Income Loans

Recent studies have raised questions about whether the lower-income loans purchased by the GSEs are adequately meeting the needs of some lower-income families. In particular, the lack of funds for down payments is one of the main impediments to homeownership, particularly for many lower-income families who find it difficult to accumulate enough cash for a down payment. As this section explains, a noticeable pattern among lower-income loans purchased by the GSEs is the predominance of loans with high down payments.

HUD's 1996 report to Congress on the possible privatization of Fannie Mae and Freddie Mac [175] found, rather surprisingly, that the mortgages taken out by lower-income borrowers and purchased by the GSEs were as likely to have high down payments as the mortgages taken out by higher-income borrowers and purchased by the GSEs. For example, considering the GSEs' purchases of home purchase loans in 1995, 58 percent of very low-income borrowers made a down payment of at least 20 percent, compared with less than 50 percent of borrowers from other groups. In addition, a surprisingly large percentage of the GSEs' first-time homebuyer loans had high down payments. In 1995, 35 percent of Fannie Mae's and 41 percent of Freddie Mac's first-time homebuyer loans had down payments of 20 percent or more.

Table A.6 presents similar data for the GSEs purchases total loans during 1997. Over three-fourths of the GSEs very low-income loans had a down payment more than 20 percent. Essentially, the GSEs have been purchasing lower-income loans with large down payments.[176]

[175] *Privatization of Fannie Mae and Freddie Mac: Desirability and Feasibility.* Office of Policy Development and Research, Department of Housing and Urban Development, (July 1996).

[176] The Treasury Department reached similar conclusions in its 1996 report on the privatization of the GSEs, *Government Sponsorship of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation,* U.S. Department of the Treasury (July 11, 1996). Based on data such as the above, the Treasury Department questioned whether the GSEs were influencing the availability of affordable mortgages and suggested that the lower-income loans purchased by the GSEs would have been funded by private market entities if the GSEs had not purchased them.

Table A.6

Down Payment Characteristics of GSE Purchases, 1997

	Size of Down Payment				
GSE Purchases	Less Than 5 Percent Down	5 to 10 Percent Down	10 to 20 Percent Down	20 Percent or More Down	Total [1]
All Loans	36,703	328,467	365,981	1,638,798	2,369,949
Very- Low-Income Loans	7,841	19,945	20,129	158,584	206,499
Less- Than-Median Income Loans	28,383	105,245	114,604	599,257	847,489
Percentage Distribution					
All Loans	1.5%	13.9%	15.4%	69.1%	100.0%
Very- Low-Income Loans	3.8%	9.7%	9.7%	76.8%	100.0%
Less- Than-Median- Income Loans	3.3%	12.4%	13.5%	70.7%	100.0%

Source: Data include all owner-occupied one-unit mortgages (home purchase, refinance, and second loans) purchased by the GSEs in 1997.

[1] Loans with missing down payments are excluded.

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The evidence is similar when the data are examined for each GSE separately. Between 1993 and 1997, 71 percent of all one-family owner-occupied loans bought by Fannie Mae, had an LTV less than or equal to 80 percent. Only 13 percent had an LTV greater than 90 percent (one percent with LTVs greater than 95 percent). For Freddie Mac, 75 percent of loans bought had an LTV less than or equal to 80 percent, while 10 percent had LTVs greater than 90 percent. Only one-eighth of one percent of Freddie Mac's loans had an LTV greater than 95 percent. For very low-income loans purchased by Fannie Mae, during the same period, 75 percent had a down payment greater than 20 percent. Large down payment loans accounted for 82 percent of Freddie Mac's purchases of very-low income borrower loans. Thus, these results are consistent with previous studies that show that the proportion of large down payment loans purchased by the GSEs from lower-income borrowers is greater than that for all loans purchases.[177]

As discussed in Section C, Both Fannie Mae and Freddie Mac have introduced high-LTV products: ''Flexible 97'' and ''Alt 97'' respectively. By lowering the required down payment to three percent and adding flexibility to the source of the down payment, these loans should be more affordable. The down payment, as well as closing costs, can come from, gifts, grants or loans from a family member, the government, a non-profit agency and loans secured by life insurance policies, retirement accounts or other assets. However, in order to control default risk, these loans also have stricter credit history requirements.

Fed Study. An important study by three economists—Glenn Canner, Wayne Passmore and Brian Surette[178]— at the Federal Reserve Board showed the implications of the GSEs' focus on high down payment loans. Canner, Passmore, and Surette examined the degree to which different mortgage market institutions—the GSEs, FHA, depositories and private mortgage insurers—are taking on the credit risk associated with funding affordable mortgages. The authors combined market share and down payment data with data on projected foreclosure losses to arrive at an estimate of the credit risk assumed by each institution for each borrower group. This study found that Fannie Mae and Freddie Mac together provided only 4 to 5 percent of the credit support for lower-income and minority borrowers and their neighborhoods. The relatively small role of the GSEs providing credit support is due to their low level of funding for these groups and to the fact that they purchase mainly high down payment loans. FHA, on the other hand, provided about two-thirds of the credit support for lower-income and minority borrowers, reflecting FHA's large market shares for these groups and the fact that most FHA-insured loans have less-than-five-percent down payments.

3. Other Studies of the GSEs Performance Relative to the Market

This section summarizes briefly the main findings from other studies of the GSEs' affordable housing performance. These include studies by the HUD and the GSEs as well as studies by academics and research organizations.

a. Studies by Bunce and Scheessele

Harold Bunce and Randall Scheessele of the Department have published two studies of affordable lending. In December 1996, they published a study titled *The GSEs' Funding of Affordable Loans.*[179] This report analyzed HMDA data for 1992–95, including a detailed comparison of the GSEs' purchases with originations in the primary market. In July 1998, they updated their earlier study to analyze the mortgage market and the GSEs' activities in 1996.[180] The findings were largely similar in both studies:[181]

(i) Both GSEs lagged the primary conventional market, depositories, and (particularly) FHA in funding mortgages for lower-income and historically underserved borrowers. FHA stands out as the major funder of affordable loans. In 1996, approximately 30 percent of FHA-insured loans were for African-American and Hispanic borrowers, compared with only 10 percent of the loans purchased by the GSEs or originated in the conventional market.

(ii) The two GSEs show very different patterns of lending—Fannie Mae is much more likely than Freddie Mac to serve underserved borrowers and their neighborhoods. Since 1992, Fannie Mae has narrowed the gap between its affordable lending performance and that of the other lenders in the conforming market. Freddie Mac's improvement has been more mixed—in some cases it has improved slightly relative to the market but in other cases it has actually declined relative to the market. The findings with respect to Freddie Mac are similar to those discussed earlier in Section E.2.c.

b. Studies by Freddie Mac

In 1995 Freddie Mac published *Financing Homes for A Diverse America,* which contained a wide variety of statistics and charts on the mortgage market. Several of the exhibits contained comparisons between the primary mortgage market and Freddie Mac's purchases in 1993 and 1994:

(i) While not asserting strict parity, this report presented comparable frequency distributions of primary market originations and Freddie Mac's purchases by borrower and census tract income, concluding that Freddie Mac ''finances housing for Americans of all incomes'' and it ''buys mortgages from neighborhoods of all incomes.''

(ii) With regard to minority share of census tracts, the report stated that Freddie Mac's ''share of minority neighborhoods matches the primary market.''

(iii) The report acknowledged that Freddie Mac's purchases did not match the primary market in terms of borrower race. It found that in 1994 African-Americans and Hispanics each accounted for 4.9 percent of the primary market but only 2.7 percent and 4.0 percent respectively of Freddie Mac's purchases. On the other hand, Whites and Asian Americans accounted for 83.7 percent and 3.2 percent of the primary market, but 86.3 percent and 3.9 percent respectively of Freddie Mac's acquisitions.

In its March 1998 Annual Housing Activities Report (AHAR) submitted to the Department and Congress, Freddie Mac presented data on this issue for 1996 and 1997. This report stated that its purchases ''essentially mirror[ed] the overall distribution of mortgage originations in terms of borrower income.'' However, the data underlying Exhibit 4 of the AHAR indicated that the share of Freddie Mac's 1997 purchases for borrowers with income (in 1996 dollars) less than $40,000 was more than 4 percentage points below the corresponding share for the primary market in 1996. A similar pattern prevailed in terms of census tract income—the data underlying Exhibit 5 of the AHAR indicated that the share of Freddie Mac's 1997 purchases in tracts with income in excess of 120 percent of area median income exceeded the corresponding share for the primary market in 1996 by about 4 percentage points.

In its March 1998 AHAR, Freddie Mac found a much closer match between the distributions of home purchase mortgages by down payment for Freddie Mac's 1997 acquisitions and the primary market in 1997, as the latter was reported by the Federal Housing Finance Board. Specifically, Exhibit 6 of the AHAR reported that 42 percent of borrowers in each category made down payments of less than 20 percent.[182]

c. Studies by Fannie Mae

Fannie Mae has not published any studies on the comparability of its mortgage purchases with the primary market. However, in an October 1998 briefing for

[177] See Glenn B. Canner, and Wayne Passmore. ''Credit Risk and the Provision of Mortgages to Lower-Income and Minority Homebuyers,'' *Federal Reserve Bulletin.* 81 (November 1995), pp. 989–1016; Glenn B. Canner, Wayne Passmore and Brian J. Surette. ''Distribution of Credit Risk among Providers of Mortgages to Lower-Income and Minority Homebuyers.'' *Federal Reserve Bulletin.* 82 (December 1996), pp. 1077–1102; Harold L. Bunce, and Randall M. Scheessele, *The GSEs' Funding of Affordable Loans: A 1996 Update,* Housing Finance Working Paper HF–005, Office of Policy Development and Research, Department of Housing and Urban Development, (July 1998); and Manchester, (1998), p. 24.

[178] Canner, et al. (1996).

[179] Harold L. Bunce and Randall M. Scheessele, *The GSEs' Funding of Affordable Loans,* Housing Finance Working Paper HF–001, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, (December 1996).

[180] Harold L. Bunce and Randall M. Scheessele, *The GSEs' Funding of Affordable Loans: A 1996 Update,* Housing Finance Working Paper HF–005, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, (July 1998), pp. 15–16.

[181] Statistics cited are from Table B.1 of Bunce and Scheessele, (1998) and are based on sales to the GSEs as reported by lenders in accordance with the HMDA. ''Lagging the market'' means, for example, that the percentage of the GSEs' loans for very low- and low-income borrowers is less than the corresponding percentage for the primary market, depositories, and the FHA.

[182] Under their charter acts, loans purchased by the GSEs with down payments of less than 20 percent must carry private mortgage insurance or a comparable form of credit enhancement.

HUD staff, Fannie Mae presented the results of several comparisons of its purchases, based on the data supplied to the Department by Fannie Mae, with loans originated in the conventional conforming market, based on the HMDA data. In these analyses, Fannie Mae stated that:

(i) The percentage of Fannie Mae's home purchase loans serving minorities exceeded the corresponding percentage in the conventional conforming market by 2.6 percentage points in 1995, 2.0 percentage points in 1996, and 2.7 percentage points (18.6 percent vs. 15.9 percent) in 1997;

(ii) The percentage of Fannie Mae's home purchase loans for low- and moderate-income households exceeded the corresponding percentage in the conventional conforming market by 0.2 percentage point in 1995, fell 0.1 percentage point short of the market in 1996, but exceeded it again, by 1.2 percentage points (38.5 percent vs. 37.3 percent), in 1997;

(iii) The percentage of Fannie Mae's home purchase loans for households in underserved areas fell 0.04 percentage point short of the conventional conforming market in 1996, but exceeded the corresponding percentage in the conventional conforming market by 1.4 percentage points (25.5 percent vs. 24.1 percent) in 1997;

(iv) The percentage of Fannie Mae's home purchase loans for very low-income households and low-income households in low-income areas fell 1.0 percentage point short of the of the conventional conforming market in 1995 and 0.9 percentage point short in 1996, but exceeded the corresponding percentage in the conventional conforming market by 2.2 percentage points (12.7 percent vs. 10.5 percent) in 1997.

Some of these findings by Fannie Mae differ from those of other researchers. This is due in part to the fact that most other studies have utilized HMDA data for both the primary market and sales to the GSEs, but Fannie Mae compared the primary market, based on HMDA data, with the patterns in the GSE loan-level data submitted to the Department.[183] [184]

d. Other Studies

Lind. John Lind examines HMDA data in order to compare the GSEs' loan purchase activity to mortgage originations in the primary conventional conforming market.[185] Like other studies, Lind presents an aggregate comparison of GSE/primary market correspondence for Black, Hispanic, low-income borrowers, and low- and moderate-income Census tracts. Unlike other studies, however, Lind also examines market correspondence at the individual metropolitan area and regional levels.

Lind finds that the GSEs are not leading the market, but that Fannie Mae, in particular, improved its performance between 1993 and 1994. In 1994, Lind finds that the shares of Fannie Mae's home purchase loans to minority and low-income borrowers were comparable to the industry's shares. But the share of its home purchase loans for low- and moderate-income census tracts and the shares of Freddie Mac's home purchase loans for all categories examined trailed those for the industry as a whole. For refinance mortgages, on the other hand, both GSEs trailed the industry in terms of the shares of their loans for the groups analyzed. In a subsequent study, Lind found that the difference between the affordable lending performance of Fannie Mae and Freddie Mac was caused by differences in policy and operating procedures of the GSEs, and not differences in the make-up of their suppliers of loans.[186]

Ambrose and Pennington-Cross. There exists a wide variation in the market shares of the GSEs, FHA and portfolio lenders across geographic mortgage markets. Brent Ambrose and Anthony Pennington-Cross analyze FHA, GSE and portfolio lender market shares to find insights into what factors affect the market shares for FHA eligible (under the FHA loan limit) loans.[187] They hypothesize that the GSEs try to mitigate higher perceived risks at the MSA level by tightening lending standards, generating a prediction of higher FHA market share in locations with characteristically higher or dynamically worsening risk. A second hypothesis is that market share of portfolio lenders increases in areas with higher risk due to ''reputation effects'' and GSE repurchase requirements. In their model, they account for cyclical risk, permanent risk, demographic, lender and regional differences.

Ambrose and Pennington-Cross found that the GSEs exhibit risk averse behavior as evidenced by lower GSE market presence in MSAs experiencing increasing risk and in MSAs that historically exhibit high-risk tendencies. FHA market shares, in contrast, are associated with high or deteriorating risk conditions. Portfolio lenders increase their mortgage portfolios during periods of economic distress, but increase the sale of originations out of portfolio during periods of increasing house prices. Lenders in MSAs with historically high delinquency hold more loans in portfolio. MSA risk is therefore concentrated among portfolio lenders and in FHA, with the GSEs bearing relatively little credit risk of this kind. The study does find that, other things being equal, the GSEs do have a higher presence in underserved areas and in areas where the minority population is highly segregated.

MacDonald (1998). Heather MacDonald[188] examined the impact of the central city housing goal from HUD's 1993–1995 interim housing goals. Census tracts were clustered according to five variables (median house value, median house age, proportion of renters, percent minority and proportion of 2 to 4 units) argued to impede secondary market purchases of homes in some neighborhoods. Borrower characteristics and lending patterns were compared across the clusters of tracts, and across central city and suburban tracts. Clustered tracts were found to be more strongly related to a set of key lending variables than are tracts divided according to central city/suburban boundaries. MacDonald concludes that targeting affirmative lending requirements on the basis of neighborhood characteristics rather than political or statistical divisions may provide a more appropriate framework for efforts to expand access to credit.

MacDonald (1999). In a 1999 study, Heather MacDonald investigated variations in GSE market share among a sample of 426 nonmetropolitan counties in eight census divisions.[189] Conventional conforming mortgage originations were estimated using residential sales data, adjusted to exclude government-insured and nonconforming loans. Multivariate analysis was used to investigate whether GSE market shares differed significantly by location, after controlling for the economic, demographic, housing stock and credit market differences among counties that could affect use of the secondary markets. The study also investigated whether there were significant differences between the nonmetropolitan borrowers served by Fannie Mae and those served by Freddie Mac.

MacDonald found that space contributes significantly to explaining variations in GSE market shares among nonmetropolitan counties, but its effects are quite specific. One region—non-adjacent West North Central counties—had significantly lower GSE market shares than all others. The disparity persisted when analysis was restricted to underserved counties only. The

[183] It is generally agreed that HMDA does not capture all loans originated in the primary market—for example, small lenders need not report under HMDA. But Fannie Mae believes that the undercount is not spread uniformly across all borrower classes—in particular, it argues that the HMDA data exclude relatively more loans made to minorities and lower-income families.

[184] Bunce and Scheessele (1998) contained a comparison (Table A.1) of HMDA-reported and GSE-reported data on the characteristics of GSE mortgage purchases in 1996. In most cases the differences between the results utilizing the two different data sources were minimal, but in some cases (such as lending in underserved areas) the evidence lent some support to Fannie Mae's assertion that the HMDA data underreports their level of activity. The discrepancies between HMDA data and GSE data at the national level are also due to the seasoned loan effect (see Section E.2.e above and Table A.4a).

[185] John E. Lind. *Community Reinvestment and Equal Credit Opportunity Performance of Fannie Mae and Freddie Mac from the 1994 HMDA Data.* San Francisco: Caniccor. Report, (February 1996).

[186] John E. Lind. *A Comparison of the Community Reinvestment and Equal Credit Opportunity Performance of Fannie Mae and Freddie Mac Portfolios by Supplier from the 1994 HMDA Data.* San Francisco: Cannicor. Report, (April 1996).

[187] Brent W. Ambrose and Anthony Pennington-Cross, *Spatial Variation in Lender Market Shares,* Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

[188] Heather MacDonald. ''Expanding Access to the Secondary Mortgage Markets: The Role of Central City Lending Goals,'' *Growth and Change.* (27), (1998), pp. 298–312.

[189] Heather MacDonald, *Fannie Mae and Freddie Mac in Non-metropolitan Housing Markets: Does Space Matter,* Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

study also suggested significant disparities between the income levels of the borrowers served by each agency, with Freddie Mac buying loans from borrowers with higher incomes than the incomes of borrowers served by Fannie Mae. An important limitation on any study of nonmetropolitan mortgages was found to be the lack of Home Mortgage Disclosure Act data. This meant that more precise conclusions about the extent to which the GSEs mirror primary mortgage originations in nometropolitan areas could not be reached.

McClure. Kirk McClure examined the twin mandates of FHEFSSA: To direct mortgage credit to neighborhoods that have been underserved by mortgage lenders; and to direct mortgage credit to low-income and minority households.[190] Using the Kansas City metropolitan area as a case study, mortgages purchased by the GSEs in 1993–96 were compared with mortgages held by portfolio lenders in order to determine the performance of the GSEs in serving these two objectives. Kansas City provides a useful case study area for this analysis, because it includes a range of weak and strong housing market areas where homebuyers have been able to move easily to serve their housing, employment, and neighborhood needs.

McClure found that borrowers are better served if credit is directed to them independent of location. Very low-income and minority borrowers fared better, in terms of the demographic, housing, and employment opportunities of the neighborhoods into which they located, than borrowers in underserved neighborhoods, suggesting that directing credit to low-income and minority households has had the desired effect of helping these households purchase homes in areas where they would find good homes and good employment prospects. According to McClure, HUD's 1996–99 housing goals defined underserved tracts very broadly, such that nearly one-half of the tracts in the Kansas City area are categorized as underserved. Because the definition of underserved is so broad, directing credit to these tracts means only increasing the flow of mortgage credit to the lesser one-half of all tracts, which includes many areas with stable housing stocks and viable job markets. The alternative approach of directing credit to underserved areas was found to be helpful only insofar as it has helped direct credit to neighborhoods with slightly lower household income levels and higher incidence of minorities than found elsewhere in the metropolitan area. McClure concluded that neighborhoods that receive very low levels of mortgage credit seemed to provide insufficient housing or employment opportunities to justify the effort that would be required to direct additional mortgage credit to them.

McClure concluded that whatever the approach, the GSEs have not been performing as well as the primary credit lenders in the Kansas City metropolitan area. In terms of helping underserved areas, the GSEs lagged behind the industry in the proportion of loans found in these areas. In terms of helping low-income and minority borrowers, the GSEs also lagged behind the industry. However, to the extent that the GSEs served these targeted populations, these households used this credit to move to neighborhoods with better housing and employment opportunities than were generally present in the underserved areas.

Williams.[191] This study looks at mortgage lending in underserved markets in the primary and secondary mortgage markets for the MSAs in Indiana. A more extensive analysis is provided for South Bend/St. Joseph County, Indiana that looks at the GSE purchases in underserved markets by type of primary market lender in both 1992 and 1996. It shows the percentage of loans bought by the GSEs and the loan they did not buy. This study found that the GSEs were more aggressive in closing the gap in St. Joseph County than in other MSAs in Indiana. It also found that Fannie Mae's underserved market performance was slightly better than Freddie Mac's performance.

Williams compared the GSEs performance in underserved markets and CRA institutions between 1992 and 1995. It shows that the GSEs have narrowed the gap between themselves and lenders while CRA institutions have lost ground relative to non-CRA lenders. A pattern observed across all Indiana MSAs is that the GSEs do not appear to lead the market but rather almost perfectly mirrored the performance of mortgage companies.

Williams looked at the impact of size and location of lenders on the home mortgage market. Large lenders were more likely to finance mortgages for very low-income and African American borrowers than smaller lenders. Lenders headquartered in Indiana were more likely to purchase mortgages in underserved areas than lenders who only had branches or no apparent physical presence in Indiana. This suggests that served markets might benefit more than underserved areas from increased competition from non-local lenders.

Gyourko and Hu. This study focuses on the GSEs' housing goals looking at the intra-metropolitan distribution of mortgage acquisitions by Fannie Mae and Freddie Mac and the spatial distribution of households within 22 MSAs.[192] The data on the GSEs' mortgage purchases is provided by the Census Tract File of Public Use Data Base and data on households is provided by the 1990 census. The study found that the distribution of goal-qualifying loan purchases by the GSEs does not match the distribution of goal-qualifying households. On average 44 percent of Low- and Moderate-Income Goal and 46 percent of Special Affordable Goal qualifying households are located in central cities. This compares to the GSEs' mortgage purchases where 26 percent of Low- and Moderate-Income Goal and 36 percent of Special Affordable Goal were located in central cities.

This study develops criteria for evaluating the GSEs' mortgage purchasing performance in census tracts. The first measure is a ratio. The numerator of the ratio is the share of the GSEs' mortgage purchases that qualify for the Special Affordable Housing Goal in the census tract. The denominator is the share of households that are targeted by the Special Affordable Housing Goal in the census tract. A ratio is also computed for the Low- and Moderate-Income Housing Goal. If the ratio is less than 0.80 then the census tract is called under-represented, meaning that the share of the GSEs' mortgage purchases which qualify for the housing goal is less than 80 percent of the share of the households that the goal targets. The analysis of these ratios shows that: (1) Central cities are more likely to be under-represented in terms of the share of affordable loans purchased by the GSEs, (2) in suburbs, the larger the census tracts' percent minority the greater the probability that affordable loan purchases are under-represented, and (3) the higher the tract's median income, the greater the likelihood that census tract is over-represented.

Gyourko and Hu's results are broadly consistent across the 22 MSAs analyzed; however, some noteworthy exceptions are made. In a few MSAs, particularly Miami and New York, the mismatch of affordable GSE purchases to affordable households is much less severe. In Boston, Los Angeles and New York, census tracts with higher relative median incomes are more likely to be under-represented.

4. GSEs' Underwriting Guidelines

Most studies on affordability of mortgage loans are quantitative using HMDA data, HUD's GSE Public Use Database or some other related database. To complement these studies, HUD commissioned a study by the Urban Institute (UI) to examine recent trends in the GSEs' underwriting criteria and to seek attitudes and opinions of informed players in four local mortgage market markets (Boston, Detroit, Miami and Seattle).[193] Interviews were conducted with mortgage lenders, community advocates and local government officials—all local actors who would be knowledgeable about the impact of the GSEs' underwriting policies on their ability to fund affordable loans for lower-income borrowers.

The UI report reveals three major trends in the GSEs' underwriting that affects affordable lending. These include increased flexibility in standard[194] underwriting and appraisal guidelines, the introduction of affordable lending products, and the introduction of

[190] Kirk McClure, *The Twin Mandates Given to the GSEs: Which Works Best, Helping Low-Income Homebuyers or Helping Underserved Areas in the Kansas City Metropolitan Area?* Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

[191] Richard Williams, ''*The Effect of GSEs, CRA, and Institutional Characteristics on Home Mortgage Lending to Underserved Markets,*'' Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, 1999).

[192] Joseph Gyourko and Dapeng Hu. *The Spatial Distribution of Secondary Market Purchases in Support of Affordable Lending,* Research Study submitted to the Office of Policy Development and Research, Department of Housing and Urban Development, (1999).

[193] Kenneth Temkin, Roberto Quercia, George Galster and Sheila O'Leary. *A Study of the GSE's Single Family Underwriting Guidelines: Final Report.* Washington DC: U.S. Department of Housing and Urban Development, (April 1999).

[194] Standard guidelines refer to guidelines not associated with affordable lending programs.

automated underwriting and credit scores in the loan application process. Through these trends, Fannie Mae and Freddie Mac have attempted to increase their capacity to serve low- and moderate-income homebuyers. They are also eliminating practices that could potentially have had disparate impacts on minority homebuyers. While both GSEs have made progress, ''most [of those interviewed] thought Fannie Mae has been more aggressive than Freddie Mac in outreach efforts, implementing underwriting changes and developing new products.'' [195]

While the GSEs improved their ability to serve low- and moderate-income borrowers, it does not appear that they have gone as far as some primary lenders to serve these borrowers and to minimize the disproportionate effects on minority borrowers. From previous published analyses of the GSEs' mortgage purchases, differences between the income characteristics and racial composition of borrowers served by the primary mortgage market and the purchase activity of the GSEs were found. ''This means that the GSEs are not serving lower-income and minority borrowers to the extent these families receive mortgages from primary lenders.'' [196] From UI's discussions with lenders, it was revealed that primary lenders are originating mortgages to lower-income borrowers using underwriting guidelines that allow lower down payments, higher debt-to-income ratios and poorer credit histories than allowed by the GSEs' guidelines. These mortgages are originated to a greater extent to minority borrowers who have lower incomes and wealth. From this evidence, UI concludes that the GSEs appear to be lagging the market in servicing low- and moderate-income and minority borrowers.

Furthermore, UI found ''that the GSEs'' efforts to increase underwriting flexibility and outreach has been noticed and is applauded by lenders and community advocates. Despite the GSEs' efforts in recent years to review and revise their underwriting criteria, however, they could do more to serve low- and moderate-income borrowers and to minimize disproportionate effects on minorities. Moreover, the use of automated underwriting systems and credit scores may place lower-income borrowers at a disadvantage when applying for a loan, even though they are acceptable credit risks.'' [197]

5. The GSEs' Support of the Mortgage Market for Single-family Rental Properties

Single-family rental housing is an important part of the housing stock because it is an important source of housing for lower-income households. Based on the 1995 American Housing Survey, 62 percent of all rental units are in structures with fewer than five units and approximately 57 percent of the stock of single-family rental units are affordable to very-low income families (*i.e.*, families earning 60 percent or less of the area median income). Of the GSEs' mortgage purchases in 1997, around 34 percent of the single-family rental units financed were affordable to very-low income households.

While single-family rental properties are a large segment of the rental stock for low-income families, they make up a small portion of the GSEs' overall business. In 1997, Fannie Mae and Freddie Mac purchased more than $11 billion in mortgages for these properties. These purchases represented 4 percent of the total dollar amount of their overall 1997 business.

It follows that since single-family rentals make up such a small part of the GSEs business, they have not penetrated the single-family rental market to the same degree that they have penetrated the owner-occupant market. Table A.7 in Section G shows that in 1997 the GSEs financed 49 percent of owner-occupied dwelling units but only 13 percent of single-family rental units.

There are a number of factors that have limited the development of the secondary market for single-family rental property mortgages thus explaining the lack of penetration by the GSEs. Little is collectively known about these properties as a result of the wide spatial dispersion of properties and owners, as well as a wide diversity of characteristics across properties and individuality of owners. This makes it difficult for lenders to properly evaluate the probability of default and severity of loss for these properties.

Single-family rental properties are important for the GSEs housing goals, especially for meeting the needs of lower-income families. In 1997 around 70 percent of single-family rental units qualified for the Low-and Moderate-Income Goals, compared with 35 percent of one-family owner-occupied properties. This heavy focus on lower-income families meant that single-family rental properties accounted for 10 percent of the units qualifying for the Low-and Moderate-Income Goal, even though they accounted for only 7 percent of the total units (single-family and multifamily) financed by the GSEs. Single-family rental properties account for 12 percent of the geographically-targeted and 13 percent of the special affordable housing goals.

A comparison of the GSEs' single-family rental and one-family owner-occupied mortgage purchases reveals the following broad patterns of borrower and neighborhood characteristics. Borrowers for single-family rental properties are more likely to be minorities than borrowers for one-family owner-occupied properties. Mortgages purchased by the GSEs for single-family rental properties compared with one-family owner-occupied properties are more likely to be located in lower-income and higher minority neighborhoods. More single-family rental than one-family owner-occupied mortgages were refinance or prior-year loans.

A closer look at borrower characteristics for single-family rental properties shows the following. First, based on ethnic/racial characteristics, borrowers for investor-owned properties are similar to borrowers for one-family owner-occupied properties. Second, borrowers for single-family rental properties, especially owner-occupied 2- to 4-unit properties, are more likely to be nonwhite than are borrowers for one-family owner-occupied and investor-owned properties. About 37 percent of the borrowers for owner-occupied 2- to 4-unit properties are non-white compared with around 16 percent for both one-family and investor-owned properties. For one-family owner-occupied and investor-owned properties about 5 percent of borrowers are African American, compared with 9 percent for owner-occupied 2- to 4-unit properties. A similar comparison applies for Hispanic borrowers, 6 percent and 16 percent respectively.

With regard to neighborhood characteristics, a comparison of units in different types of rental properties purchased by the GSEs shows that investor 1-unit properties were more likely to be located in higher-income and lower-minority neighborhoods than were units in 2- to 4-unit rental properties. For units in investor 1-unit properties, about 19 percent were in low-income neighborhoods, compared with 34 percent from units in 2- to 4-unit rental properties. About 25 percent of investor 1-unit properties were in high-minority neighborhoods, compared with 36 percent for units in 2- to 4-unit rental properties. Units in 2- to 4-unit rental properties were commonly located in older cities where many low-income and high-minority neighborhoods are located. Investor 1-unit properties were more characteristic of suburban neighborhoods where smaller populations of minorities and higher income households reside.

The GSEs can mitigate risk by purchasing mortgages which are seasoned or refinanced. The data show that mortgages on properties with additional risk components such as being investor-owned, in low-income neighborhoods, and /or in high-minority neighborhoods are more likely to be seasoned or refinanced. For the GSEs' mortgage purchases, in general, mortgages on investor-owned properties are more likely to be prior-year than mortgages on owner-occupied 2- to 4-unit properties (based on unit counts). These patterns are consistent with the notion that investor properties are more risky than owner-occupied 2- to 4-unit properties.

F. Factor 4: Size of the Conventional Conforming Mortgage Market Serving Low- and Moderate-Income Families Relative to the Overall Conventional Conforming Market

The Department estimates that dwelling units serving low-and moderate-income families will account for 50–55 percent of total units financed in the overall conventional conforming mortgage market during 2000–2003, the period for which the Low-and Moderate-Income Housing Goals are hereby established. Due to uncertainty about future market conditions, HUD has provided a plausible range, rather than a point estimate, for the market. The detailed analyses underlying these estimates are presented in Appendix D.

G. Factor 5: GSEs' Ability To Lead the Industry

FHEFSSA requires the Secretary, in determining the Low- and Moderate-Income Housing Goal, to consider the GSEs' ability to ''lead the industry in making mortgage credit available for low-and moderate-income families.'' Congress indicated that this goal should ''steer the enterprises toward the

[195] Temkin, *et al.* (1999), p. 4.

[196] Temkin, *et al.* (1999), p. 5.

[197] Temkin, *et al.* (1999), p. 28.

development of an increased capacity and commitment to serve this segment of the housing market'' and that it ''fully expect[ed] [that] the enterprises will need to stretch their efforts to achieve [these goals].'' [198]

The Department and independent researchers have published numerous studies examining whether or not the GSEs have been leading the single-family market in terms of their affordable lending performance. This research, which is summarized in Section E, concludes that the GSEs have generally lagged behind other lenders in funding lower-income borrowers and their communities. As required by FHEFSSA, the Department has produced estimates of the portion of the total (single-family and multifamily) mortgage market that qualifies for each of the three housing goals (see Appendix D). Congress intended that the Department use these market estimates as one factor in setting the percentage target for each of the housing goals. The Department's estimate for the size of the Low-and Moderate-Income market is 50–55 percent, which is substantially higher than the GSEs' performance on that goal.

[198] Senate Report 102–282, (May 15, 1992), p. 35.

This section provides another perspective on the GSEs' performance by examining the share of the total mortgage market and the share of the goal-qualifying markets (low-mod, special affordable, and underserved areas) accounted for by the GSEs' purchases. This analysis, which is conducted by product type (single-family owner, single-family rental, and multifamily), shows the relative importance of the GSEs in each of the goal-qualifying markets.

1. GSEs' Role in Major Sectors of the Mortgage Market

Table A.7 compares GSE mortgage purchases with HUD's estimates of the numbers of units financed in the conventional conforming market during 1997.[199] HUD estimates that there were 7,443,736 owner and rental units financed by new mortgages in 1997. Fannie Mae's and Freddie Mac's mortgage purchases financed 2,893,046 dwelling units, or 39 percent of all dwelling units financed. As shown in Table A.7, the GSEs play a much smaller role in the goals-qualifying markets than they do in the overall market. During 1997, new mortgages were originated for 4,290,860 dwelling units that qualified for the low-and moderate-income goal; the GSEs low-mod purchases financed 1,305,505 dwelling units, or only 30 percent of the low-mod market. Similarly, the GSEs' purchases accounted for only 24 percent of the special affordable market and 33 percent of the underserved areas market.[200] Obviously, the GSEs are not leading the industry in financing units that qualify for the three housing goals.

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[199] Table A.7 considers GSE purchases during 1997 and 1998 of conventional mortgages that were originated in 1997. HUD's methodology for deriving the 1997 market estimations is explained in Appendix D. B&C loans have been excluded from the market estimates in Table A.7.

[200] Two caveats about the data in Table A.7 should be mentioned here. First, the various market totals for underserved areas are probably understated due to the model's underestimation of mortgage activity in non-metropolitan underserved counties and of manufactured housing originations in non-metropolitan areas. Second, as discussed in Appendix D, some uncertainty exists around the adjustment for B&C single-family owner loans.

Table A.7

Number of Units by Type in the 1997 Conventional Conforming Market Compared To Fannie Mae and Freddie Mac Purchases

	Single-Family Owner	Single-Family Rental	Multifamily	Total Rental	Total
Total Units					
Market	4,936,208	1,015,538	1,491,990	2,507,528	7,443,736
Fannie Mae	1,355,693	81,152	227,531	308,683	1,664,376
Freddie Mac	1,071,065	49,813	107,792	157,605	1,228,670
GSE Total	2,426,758	130,965	335,323	466,288	2,893,046
GSE % of Market	49%	13%	22%	19%	39%
Low-Mod Units					
Market	2,034,085	913,984	1,342,791	2,256,775	4,290,860
Fannie Mae	493,489	72,514	217,134	289,648	783,137
Freddie Mac	375,952	43,711	102,704	146,415	522,367
GSE Total	869,441	116,225	319,838	436,063	1,305,505
GSE % of Market	43%	13%	24%	19%	30%
Underserved Area Units*					
Market	1,230,808	461,930	716,155	1,178,085	2,408,893
Fannie Mae	328,143	38,975	95,774	134,749	462,892
Freddie Mac	257,546	23,056	52,488	75,544	333,090
GSE Total	585,688	62,031	148,262	210,293	795,981
GSE % of Market	48%	13%	21%	18%	33%
Special Affordable Units					
Market	704,384	589,012	865,354	1,454,366	2,158,750
Fannie Mae	143,081	36,661	134,990	171,651	314,732
Freddie Mac	105,850	21,875	65,920	87,795	193,645
GSE Total	248,931	58,537	200,909	259,446	508,377
GSE % of Market	35%	10%	23%	18%	24%

Source: The market data are the estimated number of newly mortgaged units during 1997. The Single-Family Owner market data exclude B&C loans; including the B&C loans in the owner market would have reduced the GSE market share from 49 percent to 42 percent. See Appendix D for an explanation of the market methodology and various caveats (such as excluding manufactured housing in non-metropolitan areas). The GSE data include units from conventional mortgages originated during 1997 and purchased by one of the GSEs during 1997 or 1998. GSE data with missing affordability or geocode fields are reallocated based the distribution of existing data.

*The Single-Family Owner market data for underserved areas should be considered a minimal estimate. The goal-qualifying percentages that were used to derive the Single-Family Owner market estimates were based on HMDA data for metropolitan areas; as discussed in Appendix D, this underestimates the underserved area market in non-metropolitan areas.

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While the GSEs are free to meet the Department's goals in any manner that they deem appropriate, it is useful to consider their performance relative to the industry by property type. As shown in Table A.7, the GSEs accounted for 49 percent of the single-family owner market in 1997 but only 22 percent of the multifamily market and 13 percent of the single-family rental market (or a combined share of 19 percent of the rental market).

Single Family Owner Market. This market is the bread-and-butter of the GSEs' business, and based on the financial and other factors discussed below, they clearly have the ability to lead the primary market in providing credit for low- and moderate-income owners of single-family properties. However, the GSEs have been lagging behind the market in their funding of single-family owner loans that qualify for the housing goals, as discussed in Section E.2.c. Between 1996 and 1998, low- and moderate-income borrowers accounted for 34.9 percent of Freddie Mac's mortgage purchases and 38.4 percent of Fannie Mae's mortgage purchases, but 42.6 percent of primary market originations in metropolitan areas. The market share data reported in Table A.7 for the single-family owner market tell the same story. The GSEs' purchases of single-family owner loans represented 49 percent of all newly-originated owner loans in 1997, but only 43 percent of the low-mod loans that were originated, 35 percent of the special affordable loans, and 48 percent of the underserved area loans. Thus, the GSEs need to improve their performance and it appears that there is ample room in the non-GSE portions of the goals-qualifying markets for them to do so. For instance, the GSEs are not involved in almost two-thirds of special affordable owner market.

Single Family Rental Market. Single-family rental housing is a major source of low- and moderate-income housing. As discussed in Appendix D, data on the size of the primary market for mortgages on these properties is limited, but information from the American Housing Survey on the stock of such units and plausible rates of refinancing indicate that the GSEs are much less active in this market than in the single-family owner market. As shown in Table A.7, HUD estimates that the GSEs' purchases have totaled only 13 percent of newly-mortgaged single-family rental units that were affordable to low- and moderate-income families.

Many of these properties are ''mom-and-pop'' operations, which may not follow financing procedures consistent with the GSEs' guidelines. Much of the financing needed in this area is for rehabilitation loans on 2–4 unit properties in older areas, a market in which the GSEs' have not played a major role. However, this sector could certainly benefit from an enhanced role by the GSEs, and the Department believes that there is room for such an enhanced role.

Multifamily Market. Fannie Mae is the largest single source of multifamily finance in the United States, and Freddie Mac has made a solid reentry into this market over the last five years. However, there are a number of measures by which the GSEs lag the multifamily market. For example, the share of GSE resources committed to the multifamily purchases falls short of the multifamily proportion prevailing in the overall mortgage market. HUD estimates that newly-mortgaged units in multifamily properties represented 18 percent all (single-family and multifamily) dwelling units financed during 1997. [201] By comparison, multifamily acquisitions represented 13 percent all units backing Fannie Mae's 1997 mortgage purchases, with a corresponding figure of only 8 percent for Freddie Mac. [202] [203] In other words, the GSEs place more emphasis on single-family mortgages than they do on multifamily mortgages.

The GSEs' focus on the single-family market means that they play a relatively small role in the multifamily market. As shown in Table A.7, the GSEs' purchases have accounted for only 22 percent of newly-financed multifamily units during 1997—a market share much lower than their 49 percent share of the single-family owner market. Thus, these data suggest that a further enlargement of the GSEs' role in the multifamily market seems feasible and appropriate in the future.

There are a number of submarkets, such as the market for mortgages on 5–50 unit multifamily properties, where the GSEs' role have particularly lag the market. As mentioned above, the GSEs represented 22 percent of the overall conventional multifamily mortgage market in 1997, but their acquisitions of loans on small multifamily properties represented only about 2 percent of such properties financed that year.[204] Certainly the GSEs face a number of challenges in better meeting the needs of the multifamily secondary market. For example, thrifts and other depository institutions may sometimes retain their best loans in portfolio, and the resulting information asymmetries may act as an impediment to expanded secondary market transaction volume.[205] However, the GSEs have demonstrated that they have the depth of expertise and the financial resources to devise innovative solutions to problems in the multifamily market.

2. Qualitative Dimensions of the GSEs' Ability To Lead the Industry

This section discusses several qualitative factors that are indicators of the GSEs' ability to lead the industry in affordable lending. It discusses the GSEs' role in the mortgage market; their ability, through their underwriting standards, new programs, and innovative products, to influence the types of loans made by private lenders; their development and utilization of state-of-the-art technology; the competence, expertise and training of their staffs; and their financial resources.

[201] Table A.7 shows that multifamily represented 20 percent of total units financed during 1997 (obtained by dividing 1,491,990 multifamily units by 7,443,736 ''Total Market'' units). Increasing the single-family-owner number in Table A.7 by 776,193 to account for excluded B&C mortgages increases the ''Total Market'' number to 8,219,929, which is consistent with the 18 percent multifamily share reported in the text. See Appendix D for discussion of the B&C market.

[202] A similar imbalance is evident with regard to figures on the stock of mortgage debt published by the Federal Reserve Board. Within the single-family mortgage market the GSEs held loans or guarantees with an unpaid principal balance (UPB) of $1.5 trillion, comprising 36 percent of $4.0 trillion in outstanding single-family mortgage debt as of the end of 1997. At the end of 1997, the GSEs direct holdings and guarantees of $41.4 billion represented 13.7 percent of $301 billion in multifamily mortgage debt outstanding. (*Federal Reserve Bulletin*, June 1998, A 35.)

[203] For the most part, GSE multifamily purchases are similar to those in the overall market. For example, 56 percent of units backing Fannie Mae's 1997 multifamily acquisitions met the Special Affordable Goal, with a corresponding proportion of 57 percent for Freddie Mac, compared with a market estimate of approximately 60 percent, based on HUD's analysis of POMS data.

[204] This finding is based on the assumption that units in small multifamily properties represented approximately 37 percent of multifamily units financed in 1997, per the 1991 Residential Finance Survey, as discussed above. Additionally, it is assumed that 1997 multifamily conventional origination volume was $40.7 billion, as discussed in Appendix D. An average loan amount per unit of $25,167 is assumed, using a combination of loan-level GSE data and loan-level data from securitized multifamily mortgages in prospectus disclosures.

[205] The problem of secondary market ''adverse selection'' is described in James R. Follain and Edward J. Szymanoski. ''A Framework for Evaluating Government's Evolving Role in Multifamily Mortgage Markets,'' *Cityscape: A Journal of Policy Development and Research* 1(2), (1995).

a. Role in the Mortgage Market

As discussed in Section C of this Appendix, the GSEs' single-family mortgage acquisitions have generally followed the volume of originations in the primary market for conventional mortgages. However, in 1997, single-family originations rose by nearly 10 percent, while the GSEs' acquisitions declined by 7 percent. As a result, the Office of Federal Housing Enterprise Oversight (OFHEO) estimates that the GSEs' share of conventional single-family mortgage originations declined from 42 percent in 1996 to 37 percent in 1997. The GSEs' conventional single-family mortgage share rose to an estimated 48 percent in 1998, but that is still well below the peak of 58 percent attained in 1993.[206]

The GSEs' high shares of originations during the 1990s led to a rise in their share of total conventional single-family mortgages outstanding, including both conforming mortgages and jumbo mortgages.[207] OFHEO estimates that the GSEs' share of such mortgages outstanding jumped from 34 percent at the end of 1991 to 40 percent at the end of 1994 and an estimated 45 percent at the end of 1998.[208] All of the increase in the GSEs' relative role between 1991 and 1998 was due to the growth in their portfolio holdings as a share of mortgages outstanding, from 5 percent at the end of 1991 to 17 percent at the end of 1998; relative holdings of the GSEs' mortgage-backed securities by others actually declined as a share of mortgages outstanding, from 29 percent at the end of 1991 to 28 percent at the end of 1998.

The dominant position of the GSEs in the mortgage market is reinforced by their relationships with other market institutions. Commercial banks, mutual savings banks, and savings and loans are their competitors as well as their customers—they compete to the extent they hold mortgages in portfolio, but at the same time they sell mortgages to the GSEs. They also buy mortgage-backed securities, as well as the debt securities used to finance the GSEs' portfolios. Mortgage bankers, who accounted for 58 percent of all single-family loans in 1997, sell virtually all of their conventional conforming loans to the GSEs.[209] Private mortgage insurers are closely linked to the GSEs, because mortgages purchased by the enterprises that have loan-to-value ratios in excess of 80 percent are normally required to be covered by private mortgage insurance, in accordance with the GSEs' charter acts.

b. Underwriting Standards for the Primary Mortgage Market

The GSEs' underwriting guidelines are followed by virtually all originators of prime mortgages, including lenders who do not sell many of their mortgages to Fannie Mae or Freddie Mac.[210] The guidelines are also commonly followed in underwriting ''jumbo'' mortgages, which exceed the maximum principal amount which can be purchased by the GSEs (the conforming loan limit)—such mortgages eventually might be sold to the GSEs, as the principal balance is amortized or when the conforming loan limit is otherwise increased. The GSEs, through their automated underwriting systems, have started adapting their underwriting for subprime loans and other loans that have not met their traditional underwriting standards.

Because the GSEs' guidelines set the credit standards against which the mortgage applications of lower-income families are judged, the enterprises have a profound influence on the rate at which mortgage funds flow to low- and moderate-income borrowers and underserved neighborhoods. Congress realized the crucial role played by the GSEs' underwriting guidelines when it required each enterprise to submit a study on its guidelines to the Secretary and to Congress in 1993, and when it called for the Secretary to ''periodically review and comment on the underwriting and appraisal guidelines of each enterprise.'' Some of the conclusions from a study of the GSEs' single-family underwriting guidelines prepared for the Department by the Urban Institute have been discussed in Section E.

c. State-of-the-Art Technology

Both GSEs are in the forefront of new developments in mortgage industry technology. Each enterprise released an automated underwriting system in 1995—Freddie Mac's ''Loan Prospector'' and Fannie Mae's ''Desktop Underwriter.'' Both systems rely on numerical credit scores, such as those developed by Fair, Isaac, and Company, and additional data submitted by the borrower, to obtain a mortgage score. The mortgage score indicates to the lender either that the GSE will accept the mortgage, based on the application submitted, or that more detailed manual underwriting is required to make the loan eligible for GSE purchase.

It is estimated that 25–40 percent of the GSEs' purchases are now based on automated underwriting. These systems have also been adapted for FHA and jumbo loans. They have the potential to reduce the cost of loan origination, particularly for low-risk loans, but the systems are so new that no comprehensive studies of their effects have been conducted. As discussed earlier, concerns about the use of automated underwriting include the impact on minorities and the ''black box'' nature of the score algorithm.

The GSEs are using their state-of-the-art technology in certain ways to help expand homeownership opportunities. For example, Fannie Mae has developed FannieMaps, a computerized mapping service offered to lenders, nonprofit organizations, and state and local governments to help them implement community lending programs.

d. Staff Resources

Both Fannie Mae and Freddie Mac are well-known throughout the mortgage industry for the expertise of their staffs in carrying out their current programs, conducting basic and applied research regarding mortgage markets, developing innovative new programs, and undertaking sophisticated analyses that may lead to new programs in the future. The leaders of these corporations frequently testify before Congressional committees on a wide range of housing issues, and both GSEs have developed extensive working relationships with a broad spectrum of mortgage market participants, including various nonprofit groups, academics, and government housing authorities. They also contract with outside leaders in the finance industry for technical expertise not available in-house and for advice on a wide variety of issues.

e. Financial Strength

Fannie Mae. The benefits that accrue to the GSEs because of their GSE status, as well as their solid management, have made them two of the nation's most profitable businesses. Fannie Mae's net income has increased from $376 million in 1987 to $1.6 billion in 1992, $3.1 billion in 1997, and $3.4 billion in 1998—an average annual rate of increase of 22 percent. Through the fourth quarter of 1998, Fannie Mae has recorded 48 consecutive quarters of increased net income per share of common equity. Fannie Mae's return on equity averaged 23.8 percent over the 1993–97 period—far above the rates achieved by most financial corporations.

Investors in Fannie Mae's common stock have seen their annual dividends per share nearly double over the last five years, rising from $1.84 in 1993 to $3.36 in 1997. If dividends were fully reinvested, an investment of $1000 in Fannie Mae common stock on December 31, 1987 would have appreciated to $27,983.98 by December 31, 1997. This annualized total rate of return of 39.5 percent over the decade exceeded that of many leading U. S. corporations, including Intel (35.9 percent), Coca-Cola (32.4 percent), and General Electric (24.3 percent).

Freddie Mac. Freddie Mac has shown similar trends. Freddie

Mac's net income has increased from $301 million in 1987 to $622 million in 1992, $1.4 billion in 1997, and $1.7 billion in 1998—an average annual rate of increase of 17 percent. Freddie Mac's return on equity averaged 22.7 percent over the 1993–97 period—also well above the rates achieved by most financial corporations.

Investors in Freddie Mac's common stock have also seen their annual dividends per share nearly double over the last five years, rising from $0.88 in 1993 to $1.60 in 1997.

[206] Office of Federal Housing Enterprise Oversight, *1998 Report to Congress,* Figure 9, page 32.

[207] A jumbo mortgage is one for which the loan amount exceeds the maximum principal amount for mortgages purchased by the enterprises—$240,000 for mortgages on 1-unit properties in 1999, with limits that are 50 percent higher in Alaska, Hawaii, Guam, and the Virgin Islands.

[208] Office of Federal Housing Enterprise Oversight, *1998 Report to Congress*, (June 15, 1998), Figure 9, p. 32; and unpublished OFHEO estimates for 1998.

[209] Mortgage originations for 1997 were reported in the Department of Housing and Urban Development, *HUD Survey of Mortgage Lending Activity: Fourth Quarter/Annual 1997,* (September 24, 1998).

[210] The underwriting guidelines published by the two GSEs are similar in most aspects. And since November 30, 1992, Fannie Mae and Freddie Mac have provided lenders the same *Uniform Underwriting and Transmittal Summary* (Fannie Mae Form 1008/Freddie Mac Form 1077), which is used by originators to collect certain mortgage information that they need for data entry when mortgages are sold to either GSE.

If dividends were fully reinvested, an investment of $1000 in Freddie Mac common stock on December 29, 1989 would have appreciated to $8,670.20 by December 31, 1997, for an annualized total rate of return of 31.0 percent over this period. This was slightly higher than the annual return on Fannie Mae common stock (29.9 percent) and substantially higher than the average gain in the S&P Financial-Miscellaneous index (24.1 percent) over the 1990–97 period.[211]

Other indicators. Additional indicators of the strength of the GSEs are provided by various rankings of American corporations. One survey found that at the end of 1997 Fannie Mae was first of all companies in total assets and Freddie Mac ranked 13th.[212] Business Week has reported that among Standard & Poor's 500 companies in 1997 Fannie Mae and Freddie Mac respectively ranked 25th and 61st in market value, and 28th and 57th in total profits.[213]

f. Conclusion About Leading the Industry

In light of these considerations, the Secretary has determined that the GSEs have the ability to lead the industry in making mortgage credit available for low-and moderate-income families.

H. Factor 6: The Need To Maintain the Sound Financial Condition of the GSEs

HUD has undertaken a separate, detailed economic analysis of this proposed rule, which includes consideration of (a) the financial returns that the GSEs earn on low- and moderate-income loans and (b) the financial safety and soundness implications of the housing goals. Based on this economic analysis and discussions with the Office of Federal Housing Enterprise Oversight, HUD concludes that the proposed goals raise minimal, if any, safety and soundness concerns.

I. Determination of the Low- and Moderate-Income Housing Goals

The annual goal for each GSE's purchases of mortgages financing housing for low- and moderate-income families is established at 48 percent of eligible units financed in calendar year 2000, and 50 percent of eligible units financed in each of calendar years 2001, 2002 and 2003. This goal will remain in effect for 2004 and thereafter, unless changed by the Secretary prior to that time. The goal represents an increase over the 1996 goal of 40 percent and the 1997–99 goal of 42 percent. The goals for 2001–2003 are in the lower portion of the range of market share estimates of 50–55 percent, presented in Appendix D. The Secretary's consideration of the six statutory factors that led to the choice of these goals is summarized in this section.

1. Housing Needs and Demographic Conditions

Data from the 1990 Census and the American Housing Surveys demonstrate that there are substantial housing needs among low- and moderate-income families, especially among lower-income and minority families in this group. Many of these households are burdened by high homeownership costs or rent payments and will likely continue to face serious housing problems, given the dim prospects for earnings growth in entry-level occupations. According to HUD's ''Worst Case Housing Needs'' report, 21 percent of owner households faced a moderate or severe cost burden in 1995. Affordability problems were even more common among renters, with 40 percent paying more than 30 percent of their income for rent in 1995.[214]

Single Family Mortgage Market. Many younger, minority and lower-income families did not become homeowners during the 1980s due to the slow growth of earnings, high real interest rates, and continued house price increases. Over the past six years, economic expansion, accompanied by low interest rates and increased outreach on the part of the mortgage industry, has improved affordability conditions for these families. Between 1993 and 1998, record numbers of lower-income and minority families purchased homes. First-time homeowners have become a major driving force in the home purchase market over the past five years. Thus, the 1990s have seen the development of a strong affordable lending market. Despite this growth in affordable lending to minorities, disparities in the mortgage market remain. For example, African-American applicants are still twice as likely to be denied a loan as white applicants, even after controlling for income.

Several demographic changes will affect the housing finance system over the next few years. First, the U.S. population is expected to grow by an average of 2.4 million per year over the next 20 years, resulting in 1.1 to 1.2 million new households per year. The aging of the baby-boom generation and the entry of the baby-bust generation into prime home buying age will have a dampening effect on housing demand. However, the continued influx of immigrants will increase the demand for rental housing, while those who immigrated during the 1980's will be in the market for owner-occupied housing. Non-traditional households have become more important, as overall household formation rates have slowed. With later marriages, divorce, and non-traditional living arrangements, the fastest growing household groups have been single-parent and single-person households. With continued house price appreciation and favorable mortgage terms, ''trade-up buyers'' will increase their role in the housing market. These demographic trends will lead to greater diversity in the homebuying market, which will require adaptation by the primary and secondary mortgage markets.

As a result of the above demographic forces, housing starts are expected to average 1.5 million units between 2000 and 2003, essentially the same as in 1996–99.[215] Refinancing of existing mortgages, which accounted for 50 percent of originations in 1998, will continue to play a major role in 1999, returning to more normal levels during 2000. Thus the mortgage market should remain strong in 1999, while easing somewhat during 2000.

Multifamily Mortgage Market. Since the early 1990s, the multifamily mortgage market has become more closely integrated with global capital markets, although not to the same degree as the single-family mortgage market. Loans on multifamily properties remain viewed as riskier than their single-family counterparts. Property values, vacancy rates, and market rents in multifamily properties appear to be highly correlated with local job market conditions, creating greater sensitivity of loan performance to economic conditions than may be experienced for single-family mortgages.

Recent volatility in the market for Commercial Mortgage Backed Securities (CMBS), an important source of financing for multifamily properties, underlines the need for an ongoing GSE presence in the multifamily secondary market. The potential for an increased GSE presence is enhanced by virtue of the fact that an increasing proportion of multifamily mortgages is now originated in accordance with secondary market standards.

The GSEs have the capability to increase the availability of long-term, fixed rate financing, thereby contributing greater liquidity in market segments where increased GSE presence can provide lenders with a more viable ''exit strategy'' than what is presently available. It appears that the cost of mortgage financing on properties with 5–50 units, where much of the nation's affordable housing stock is concentrated, may be higher than warranted by the degree of inherent credit risk.[216] Presently, however, the GSEs purchase only about 5 percent of units in 5–50 unit properties financed annually. Borrowers have also experienced difficulty obtaining mortgage financing for multifamily properties with significant rehabilitation needs. Historically the flow of capital into multifamily housing for seniors has, moreover, been characterized by a great deal of volatility.

2. Past Performance and Ability To Lead the Industry

The GSEs have played a major role in the conventional single-family mortgage market in the 1990s. The GSEs' purchases of single-family-owner mortgages have accounted for 49 percent of mortgages originated in the conventional conforming market during 1997. Many industry observers believe that the role of the GSEs in the late-1980s and 1990s is a major reason why the decline of the thrift industry had only minor effects on the nation's housing finance system.

[211] Freddie Mac stock was not publicly traded until after the passage of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), thus it is not possible to calculate a 10–year annualized rate of return.

[212] *Forbes,* (April 20, 1998), p. 315.

[213] *Business Week,* (March 30, 1998), p. 154.

[214] *Rental Housing Assistance—The Crisis Continues: The 1997 Report to Congress on Worst Case Housing Needs,* Department of Housing and Urban Development, Office of Policy Development and Research, (April 1998).

[215] Standard & Poor's DRI, *The U.S. Economy.* (September 1999), p. 54.

[216] See Drew Schneider and James Follain, ''A New Initiative in the Federal Housing Administration's Office of Multifamily Housing Programs: An Assessment of Small Projects Processing,'' *Cityscape: A Journal of Policy Development and Research* 4(1), (1998), pp. 43–58.

Additionally, the American mortgage market was not impacted adversely in any way by the recent volatility in world financial markets.

The enterprises' role in the mortgage market is also reflected in their use of cutting edge technology, such as the development of Loan Prospector and Desktop Underwriter, the automated underwriting systems developed by Freddie Mac and Fannie Mae, respectively. Both GSEs are also entering new and challenging fields of mortgage finance, including activities involving subprime mortgages and mortgages on manufactured housing.

The GSEs' performance on the Low- and Moderate-Income Housing Goal has also improved significantly in recent years, as shown in Figure A.1. Fannie Mae's performance increased from 34.2 percent in 1993 to 42.3 percent in 1995, 45.6 percent in 1996, and 45.7 percent in 1997, then falling slightly to 44.1 percent in 1998. Freddie Mac's performance also increased, from 29.7 percent in 1993 to 38.9 percent in 1995, 41.1 percent in 1996, 42.6 percent in 1997, and 42.9 percent in 1998. Although Freddie Mac's low- and moderate-income shares were below Fannie Mae's shares in every year, its goal performance was 97 percent of Fannie Mae's performance in 1998, the highest performance ratio for Freddie Mac since goals were instituted in 1993. This increase in Freddie Mac's relative performance on the Low- and Moderate-Income Housing Goal resulted primarily from its increased role in the multifamily mortgage market.

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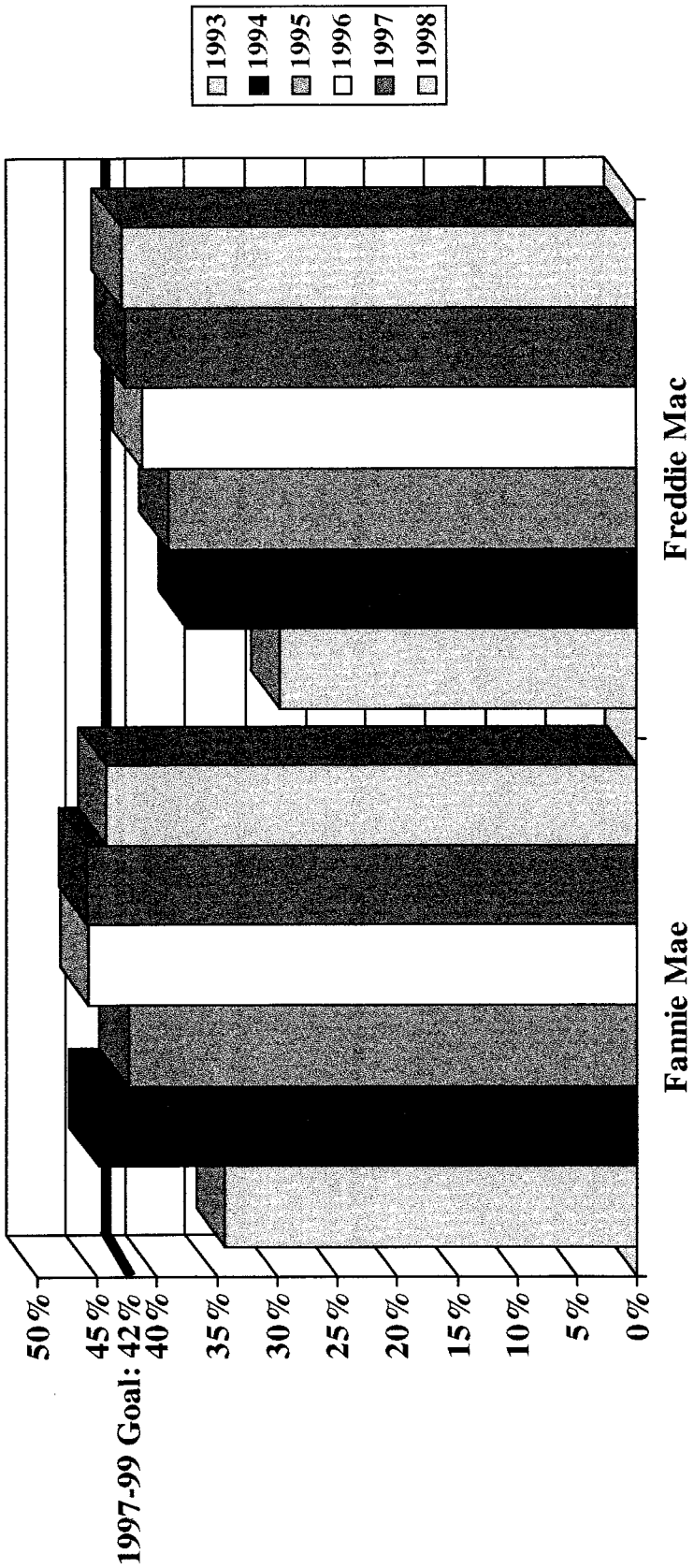
Figure A.1

Low- and Moderate-Income Mortgage Purchases

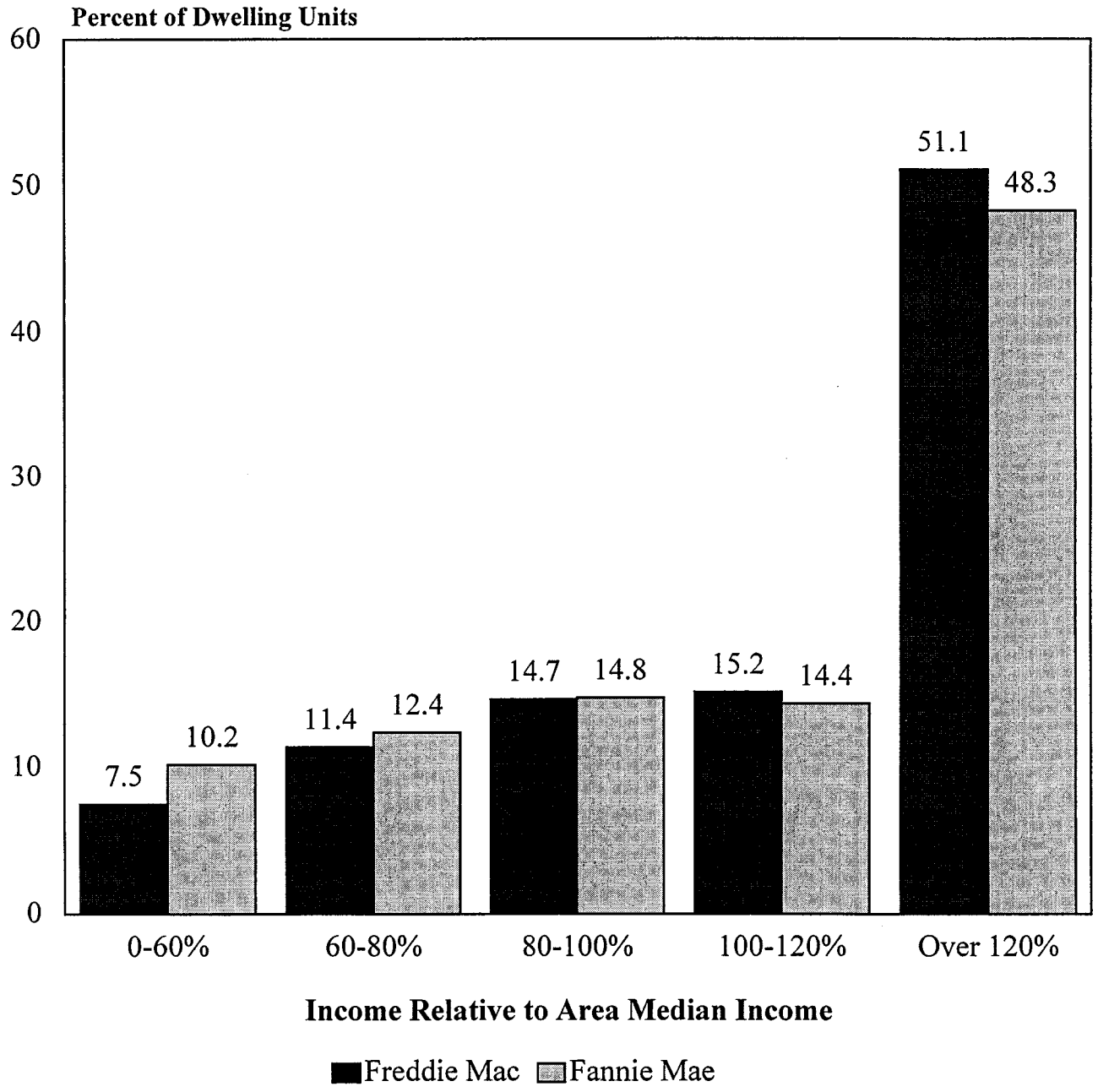


Low- and Moderate-Income Goal is 42% of units financed for 1997-99 (40% for 1996).

Source: HUD analysis of GSEs' loan-level data.

Figure A.2

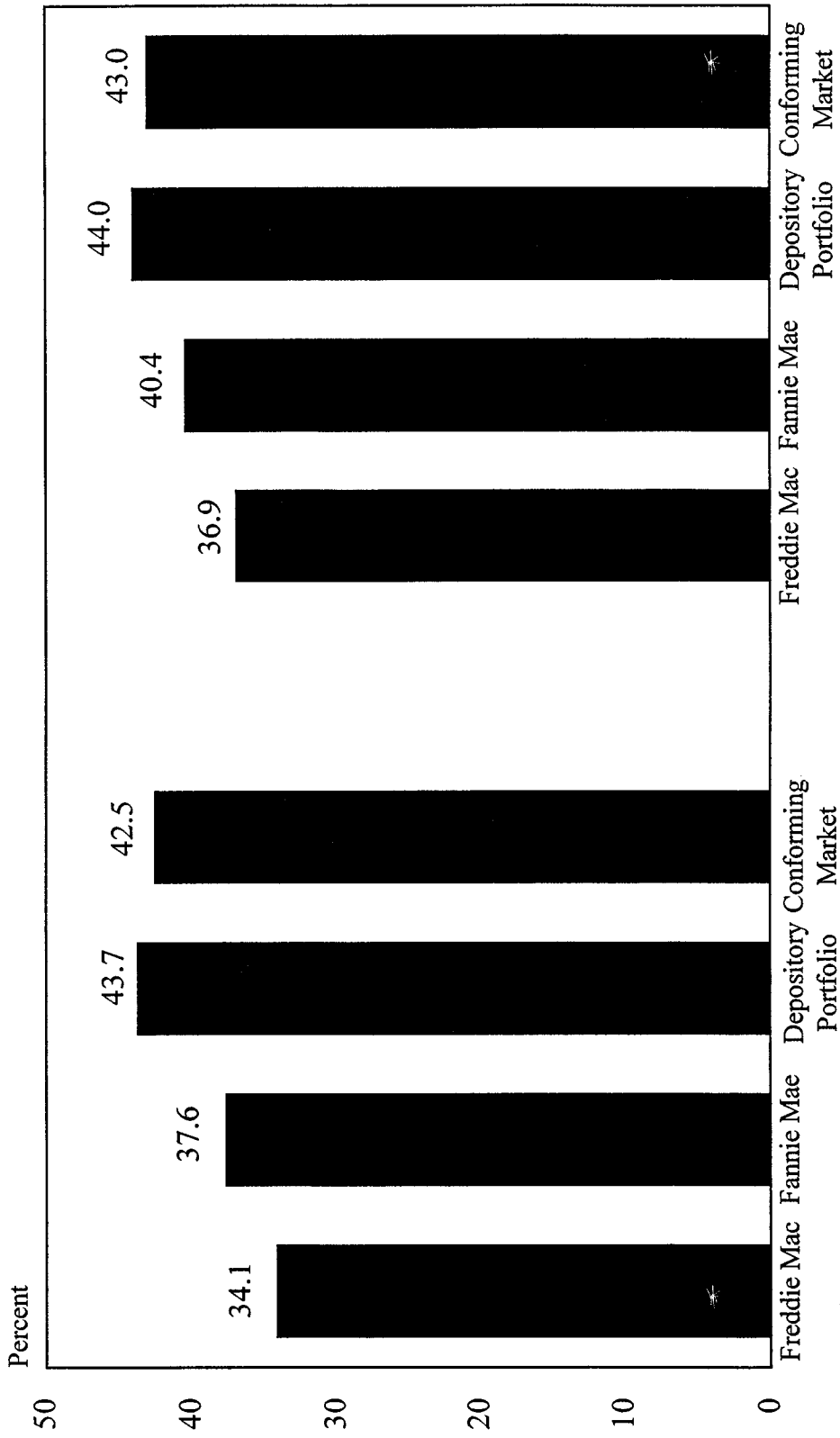
Distribution of GSE Purchases of Single-Family Owner-Occupied Home Loans by Income Class of Mortgagor for 1997



Source: GSE loan-level data on purchases of home loans in both metropolitan and non-metropolitan areas.

Figure A.3

The Share Of GSE And Conventional Conforming Mortgages for Low- and Moderate-Income Borrowers, 1997 and 1998



Source: Conforming market and depository data are from 1997 and 1998 HMDA; GSE data are from loan-level data reported to HUD. Data are for single-family home purchase loans in metropolitan areas. See Table A.4a for further explanation.

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Single Family Affordable Lending Market. Despite these gains in goal performance, the Department remains concerned about the GSEs' support of lending for the lower-income end of the market. As shown in Figures A.2 and A.3, the lower-income shares of the GSEs' purchases are too low, particularly when compared with the corresponding shares for portfolio lenders and the primary market.

This appendix has reached the following findings with respect to the GSEs' purchases of affordable loans for low- and moderate-income families and their communities.

(i) While Fannie Mae and Freddie Mac have both improved their support for the single-family affordable lending market over the past six years, they have generally lagged the overall single-family market in providing affordable loans to lower-income borrowers. This finding is based on HUD's analysis of GSE and HMDA data and on numerous studies by academics and research organizations.

(ii) The GSEs show somewhat different patterns of mortgage purchases—for example, Freddie Mac is less likely than Fannie Mae to fund mortgages for lower-income families. As a result, the percentage of Freddie Mac's purchases benefiting historically underserved families and their neighborhoods is less than the corresponding shares of total market originations, while Fannie Mae's purchases are closer to the patterns of originations in the primary market (see Figure A.3).

(iii) A study by The Urban Institute of lender experience with the GSEs' underwriting guidelines finds that the enterprises have stepped up their outreach efforts and increased the flexibility in their standards to better accommodate the special circumstances of lower-income borrowers. However, this study concludes that the GSEs' guidelines remain somewhat inflexible and that the enterprises are often hesitant to purchase affordable loans. Lenders also tell The Urban Institute that Fannie Mae has been more aggressive than Freddie Mac in market outreach to underserved groups, in offering new affordable products, and in adjusting its underwriting standards.

(iv) A large percentage of the lower-income loans purchased by the enterprises have relatively high down payments, which raises questions about whether the GSEs are adequately meeting the needs of lower-income families have difficulty raising enough cash for a large down payment.

(v) There are important parts of the single-family market where the GSEs have played a minimal role. For example, single-family rental properties are an important source of low-income housing, but they represent only a small portion of the GSEs' business. GSE purchases have accounted for only 13 percent of the single-family rental units that received financing in 1997. An increased presence by Fannie Mae and Freddie Mac would bring lower interest rates and liquidity to this market, as well as improve their goals performance.

(vi) The above points can be summarized by examining the GSEs' share of the single-family mortgage market. The GSEs' total purchases have accounted for 43 percent of all single-family (both owner and rental) units financed during 1997; however, their low-mod purchases have accounted for only one-third of the low- and moderate-income single-family units that were financed during that year.

In conclusion, the Department's analysis suggests that the GSEs are not leading the single-family market in purchasing loans that qualify for the Low- and Moderate-Income Goal. There is room for Fannie Mae and, particularly, Freddie Mac to improve their performance in purchasing affordable loans at the lower-income end of the market. Moreover, evidence suggests that there is a significant population of potential homebuyers who might respond well to aggressive outreach by the GSEs. Specifically, both Fannie Mae and the Joint Center for Housing Studies expect immigration to be a major source of future homebuyers. Furthermore, studies indicate the existence of a large untapped pool of potential homeowners among the rental population. Indeed, the GSEs' recent experience with new outreach and affordable housing initiatives is important confirmation of this potential.

Multifamily Market. Fannie Mae and, especially, Freddie Mac have rapidly expanded their presence in the multifamily mortgage market in the period since the passage of FHEFSSA. The Senate report on this legislation in 1992 referred to the GSEs' activities in the multifamily arena as ''troubling,'' citing Freddie Mac's September 1990 suspension of its purchases of new multifamily mortgages and criticism of Fannie Mae for ''creaming'' the market.[217]

Freddie Mac has successfully rebuilt its multifamily acquisition program, as shown by the increase in its purchases of multifamily mortgages from $27 million in 1992 to $847 million in 1994 and $6.6 billion in 1998. As a result, concerns regarding Freddie Mac's multifamily capabilities no longer constrain their performance with regard to low- and moderate-income families in the manner that prevailed at the time of the December 1995 rule.

Fannie Mae never withdrew from the multifamily market, but it has also stepped up its activities in this area substantially, with multifamily purchases rising from $3.0 billion in 1992 to $3.8 billion in 1994 and $12.5 billion in 1998. Fannie Mae publicly announced in 1994 an aggressive goal of conducting $50 billion in multifamily transactions between 1994 and the end of the decade, and it appears likely that it will be successful in reaching this goal.[218] Also, Fannie Mae's multifamily underwriting standards are highly influential and have been widely emulated throughout the multifamily mortgage market.

The increased role of Fannie Mae and Freddie Mac in the multifamily market has major implications for the Low- and Moderate-Income Housing Goal, since a very high percentage of multifamily units have rents which are affordable to low- and moderate-income families. However, the potential of the GSEs to lead the multifamily mortgage industry has not been fully developed. As reported earlier in Table A.7, the GSEs' purchases (through 1998) have accounted for only 22 percent of the multifamily units that received financing during 1997. Standard & Poor's recently described both GSEs' multifamily lending as ''extremely conservative.''[219] In particular, their multifamily purchases do not appear to be contributing to mitigation of the excessive cost of mortgage financing for small multifamily properties, nor have the GSEs demonstrated market leadership with regard to rehabilitation loans, a segment where financing has sometimes been difficult to obtain. In conclusion, it appears that both GSEs can make improvements in their underwriting policies and procedures and introduce new products that will enable them to more effectively serve segments of the multifamily market that can benefit from greater liquidity.

3. Size of the Mortgage Market for Low- and Moderate-Income Families

As detailed in Appendix D, the low-and moderate-income mortgage market accounts for 50 to 55 percent of dwelling units financed by conventional conforming mortgages. In estimating the size of the market, HUD excluded the effects of the B&C market. HUD also used alternative assumptions about future economic and market conditions that were less favorable than those that existed over the last five years. HUD is well aware of the volatility of mortgage markets and the possible impacts of changes in economic conditions on the GSEs' ability to meet the housing goals. Should conditions change such that the goals are no longer reasonable or feasible, the Department has the authority to revise the goals.

4. The Low- and Moderate-Income Housing Goals for 2000–03

There are several reasons why the Secretary is increasing the Low- and Moderate-Income Housing Goal from 42 percent in 1997–99 to 48 percent of eligible units financed in calendar year 2000 and 50 percent of eligible units financed in each of calendar years 2001, 2002 and 2003.

First, when the 1996–99 goals were established in December 1995, Freddie Mac had only recently reentered the multifamily mortgage market, after its absence in the early 1990s. Freddie Mac has rebuilt its multifamily acquisition program over the past several years, with its 1998 purchases at a level nearly five times what they were in 1994. The limited role of Freddie Mac in the multifamily market was a significant constraint in setting the Low- and Moderate-Income Housing Goals for 1996–99. Freddie Mac's return as a major participant in the multifamily market was an important factor in the improvement in its performance on the Low- and Moderate-Income Housing Goal, as shown in Figure A.1, and it removes an impediment to higher goals for both GSEs. These goals will create new opportunities for the GSEs to further step up their support of mortgages on properties with rents affordable

[217] Senate Report 102–282, (May 15, 1992), p. 36.

[218] See Fannie Mae's World Wide Web site at http://www.fanniemae.com.

[219] ''Final Report of Standard & Poor's to the Office of Federal Housing Enterprise Oversight (OFHEO),'' (February 3, 1997), p. 10.

to low- and moderate-income families. However, as discussed in the Preamble, to encourage Freddie Mac to further step up its role in the multifamily market, the Secretary is proposing a ''temporary adjustment factor'' for its purchases of loans on properties with more than 50 units. Specifically, each unit in such properties would be weighted as 1.2 units in the numerator of the housing goal percentage for both the Low and Moderate Income Goal and the Special Affordable Housing Goal for the years 2000–2003.

Second, the single-family affordable market had only recently begun to grow in 1993 and 1994, the latest period for which data was available when the 1996–99 goals were established in December 1995. But the historically high low- and moderate-income share of the primary mortgage market attained in 1994 has been maintained over the 1995–98 period. The three-year average estimate of the low- and moderate-income share of the single-family owner mortgage market was 38 percent for 1992–94, but 42 percent for 1995–98 and 41 percent for the 1992–98 period as a whole. The continued high affordability of housing suggests that a strong low-income market continued for a sixth straight year in 1999. Current economic forecasts suggest that the strong housing affordability of the past several years will be maintained in the post-1999 period, leading to additional opportunities for the GSEs to support mortgage lending benefiting low- and moderate-income families.[220] And various surveys indicate that the demand for homeownership by minorities, immigrants, and younger households will remain strong for the foreseeable future.

Although single-family owner 1-unit properties comprise the ''bread-and-butter'' of the GSEs' business, evidence presented above demonstrates that the shares of their loans for low- and moderate-income families taking out loans on such properties lag the corresponding shares for the primary market. For example, in 1997 the Department finds that these shares amounted to 34.1 percent for Freddie Mac, 37.6 percent for Fannie Mae, and 42.5 percent for the primary market; as shown in Figure A.3, a similar pattern holds for 1998. Thus the Secretary believes that the GSEs can do more to raise the low- and moderate-income shares of their mortgages on these properties. This can be accomplished by building on various programs that the enterprises have already started, including (1) their outreach efforts, (2) their incorporation of greater flexibility into their underwriting guidelines, (3) their purchases of seasoned CRA loans, (4) their entry into new single-family mortgage markets such as loans on manufactured housing, (5) their increased purchases of loans on small multifamily properties, and (6) their increased presence in other rental markets where they have had only a limited presence in the past.

Third, one particular area where the GSEs could play a greater role is in the mortgage market for single-family rental dwellings. These properties, containing 1–4 rental units, are an important source of housing for low- and moderate-income families, but the GSEs have not played a major role in this mortgage market—they accounted for only 6.5 percent of units financed by Fannie Mae and 6.4 percent of units financed by Freddie Mac in 1997. The Department believes that the GSEs' role in financing loans on such properties, which are generally owned by ''mom and pop'' businesses, can and should be enhanced, though it recognizes that single-family rental properties are very heterogeneous, making it more difficult to develop standardized underwriting standards for the secondary market. But the Secretary believes that the GSEs can do more to play a leadership role in providing financing for such properties.[221]

Finally, a wide variety of quantitative and qualitative indicators indicate that the GSEs' have the financial strength to improve their affordable lending performance. For example, combined net income has risen steadily over the last decade, from $888 million in 1988 to $5.12 billion in 1998, an average annual growth rate of 19 percent per year. This financial strength provides the GSEs with the resources to lead the industry in supporting mortgage lending for units affordable to low- and moderate-income families.

Summary. Figure A.4 summarizes many of the points made in this section regarding opportunities for Fannie Mae and Freddie Mac to improve their overall performance on the Low- and Moderate-Income Goal. The GSEs' purchases have provided financing for 2,893,046 (or 39 percent) of the 7,443,736 single-family and multifamily units that were financed in the conventional conforming market during 1997. However, in the low- and moderate-income part of the market, the 1,305,505 units that were financed by GSE purchases represented only 30 percent of the 4,290,860 dwelling units that were financed in the market. Thus, there appears to ample room for the GSEs to increase their purchases of loans that qualify for the Low- and Moderate-Income Goal. Examples of specific market segments that would particularly benefit from a more active secondary market have been provided throughout this appendix.

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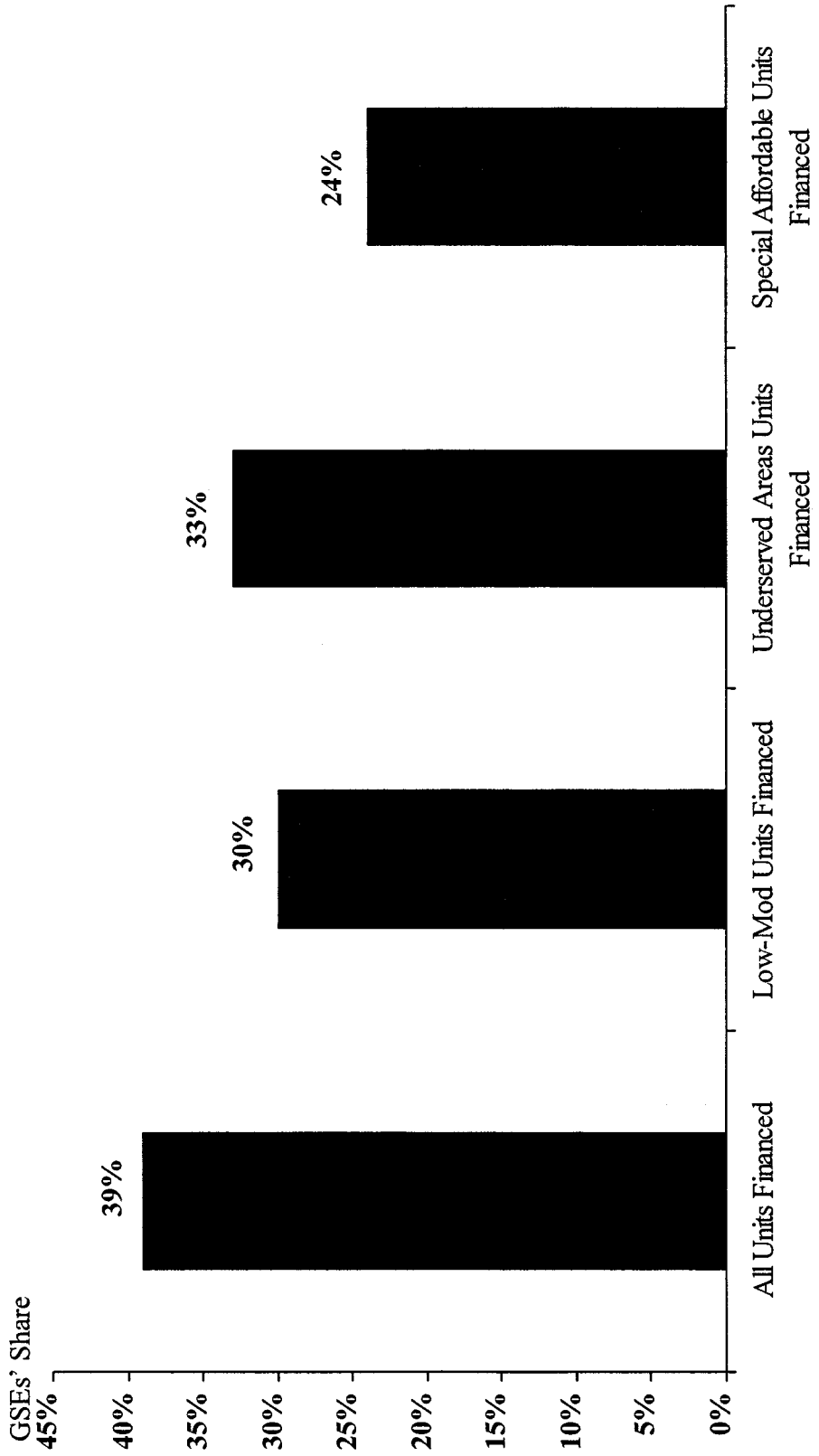
[220] However, the Department's goals for the GSEs have been set so that they will be feasible even under less favorable conditions in the housing market.

[221] Another area where stepped-up GSE involvement could benefit low- and moderate-income families is lending for the rehabilitation of properties, which is especially needed in our urban areas. The GSEs have made some efforts in this complex area, but the benefits of stepped-up roles by the GSE could be sizable.

Figure A.4

GSEs' Share of the 1997 Conventional Conforming Market by Housing Goal Category



Note: The conventional conforming market, as estimated by HUD, includes single-family owner, single-family rental, and multifamily units financed during 1997. See notes for Table A.7.

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5. Conclusions

Having considered the projected mortgage market serving low- and moderate-income families, economic, housing and demographic conditions for 2000–03, and the GSEs' recent performance in purchasing mortgages for low- and moderate-income families, the Secretary has determined that the annual goal of 48 percent of eligible units financed in calendar year 2000 and 50 percent of eligible units financed in each of calendar years 2001, 2002 and 2003 is feasible. Moreover, the Secretary has considered the GSEs' ability to lead the industry as well as the GSEs' financial condition. The Secretary has determined that the goal is necessary and appropriate.

Appendix B.—Departmental Considerations To Establish the Central Cities, Rural Areas, and Other Underserved Areas Goal

A. Introduction

1. Establishment of Goal

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) requires the Secretary to establish an annual goal for the purchase of mortgages on housing located in central cities, rural areas, and other underserved areas (the ''Geographically Targeted Goal'').

In establishing this annual housing goal, Section 1334 of FHEFSSA requires the Secretary to consider:

1. Urban and rural housing needs and the housing needs of underserved areas;
2. Economic, housing, and demographic conditions;
3. The performance and effort of the enterprises toward achieving the Geographically Targeted Goal in previous years;
4. The size of the conventional mortgage market for central cities, rural areas, and other underserved areas relative to the size of the overall conventional mortgage market;
5. The ability of the enterprises to lead the industry in making mortgage credit available throughout the United States, including central cities, rural areas, and other underserved areas; and
6. The need to maintain the sound financial condition of the enterprises.

Organization of Appendix. The remainder of Section A defines the Geographically Targeted Goal for both metropolitan areas and nonmetropolitan areas. Sections B and C address the first two factors listed above, focusing on findings from the literature on access to mortgage credit in metropolitan areas (Section B) and in nonmetropolitan areas (Section C). Separate discussions are provided for metropolitan and nonmetropolitan (rural) areas because of differences in the underlying markets and the data available to measure them. Section D discusses the past performance of the GSEs on the Geographically Targeted Goal (the third factor) and Sections E–G report the Secretary's findings for the remaining factors. Section H summarizes the Secretary's rationale for setting the level for the Geographically Targeted Goal.

2. HUD's Geographically Targeted Goal

HUD's proposed definition of the geographic areas targeted by this goal is basically the same as that used during 1996–99. It is divided into a metropolitan component and a nonmetropolitan component.

Metropolitan Areas. This proposed rule provides that within metropolitan areas, mortgage purchases will count toward the goal when those mortgages finance properties that are located in census tracts where (1) median income of families in the tract does not exceed 90 percent of area (MSA) median income or (2) minorities comprise 30 percent or more of the residents and median income of families in the tract does not exceed 120 percent of area median income.

The definition includes 20,326 of the 43,232 census tracts (47 percent) in metropolitan areas, which include 44 percent of the metropolitan population.[1] The tracts included in this definition suffer from poor mortgage access and distressed socioeconomic conditions. The average mortgage denial rate in these tracts is 23.4 percent, almost twice the denial rate in excluded tracts. The tracts include 73 percent of the number of poor persons in metropolitan areas.

This definition is based on studies of mortgage lending and mortgage credit flows conducted by academic researchers, community groups, the GSEs, HUD and other government agencies. While more research must be done before mortgage access for different types of people and neighborhoods is fully understood, one finding from the existing research literature stands out—high-minority and low-income neighborhoods continue to have higher mortgage denial rates and lower mortgage origination rates than other neighborhoods. A neighborhood's minority composition and its level of income are highly correlated with measuring access to mortgage credit.

Nonmetropolitan Areas. This proposed rule provides that in nonmetropolitan areas mortgage purchases that finance properties that are located in counties will count toward the Geographically Targeted Goal where (1) median income of families in the county does not exceed 95 percent of the greater of (a) state nonmetropolitan median income and (b) nationwide nonmetropolitan median income or (2) minorities comprise 30 percent or more of the residents and median income of families in the county does not exceed 120 percent of state nonmetropolitan median income.

Two important factors influenced HUD's definition of nonmetropolitan underserved areas—lack of available data for measuring mortgage availability in rural areas and lenders' difficulty in operating mortgage programs at the census tract level in rural areas. Because of these factors, this proposed rule uses a more inclusive, county-based definition of underservedness in rural areas. HUD's definition includes 1,511 of the 2,305 counties (66 percent) in nonmetropolitan areas and accounts for 54 percent of the nonmetropolitan population and 67 percent of the nonmetropolitan poverty population.

Goal Levels. The proposed Geographically Targeted Goal is 29 percent of eligible units financed in calendar year 2000 and 31 percent of eligible units financed in calendar year 2001 and thereafter. HUD estimates that the mortgage market in areas included in the Geographically Targeted Goal accounts for 29–32 percent of the total number of newly-mortgaged dwelling units. HUD's analysis indicates that 28.8 percent of Fannie Mae's 1997 purchases and 27.0 percent of 1998 purchases financed dwelling units located in these areas. The corresponding performance for Freddie Mac was 26.3 percent in 1997 and 26.1 percent in 1998.

B. Consideration of Factors 1 and 2 in Metropolitan Areas: The Housing Needs of Underserved Urban Areas and Housing, Economic, and Demographic Conditions in Underserved Urban Areas

This section discusses differential access to mortgage funding in urban areas and summarizes available evidence on identifying those neighborhoods that have historically experienced problems gaining access to mortgage funding. Section B.1 provides an overview of the problem of unequal access to mortgage funding in the nation's housing finance system, focusing on discrimination and other housing problems faced by minority families and the communities where they live. Section B.2 examines mortgage access at the neighborhood level and discusses in some detail the rationale for the Geographically Targeted Goal in metropolitan areas. The most thorough studies available provide strong evidence that in metropolitan areas low income and minority composition identify neighborhoods that are underserved by the mortgage market.

Three main points are made in this section:

There is evidence of racial disparities in both the housing and mortgage markets. Partly as a result of this, the homeownership rate for minorities is substantially below that for whites.

The existence of substantial neighborhood disparities in mortgage credit is well documented for metropolitan areas. Research has demonstrated that census tracts with lower incomes and higher shares of minority population consistently have poorer access to mortgage credit, with higher mortgage denial rates and lower origination rates for mortgages. Thus, the income and minority composition of an area is a good measure of whether that area is being underserved by the mortgage market.

• Research supports a targeted definition. Studies conclude that characteristics of the applicant and the neighborhood where the property is located are the major determinants of mortgage denials and

[1] Tracts are excluded from the analysis if median income is suppressed or there are no owner-occupied 1–4 unit properties. There are 2,033 such tracts. When reporting denial, origination, and application rates, tracts are excluded from the analysis if there are no purchase or refinance applications. Tracts are also excluded from the analysis if: (1) Group quarters constitute more than 50 percent of housing units or (2) there are less than 15 home purchase applications in the tract and the tract denial rates equal 0 or 100 percent. Excluded tracts account for a small percentage of mortgage applications (1.4 percent). These tracts are not excluded from HUD's underserved areas if they meet the income and minority thresholds. Rather, the tracts are excluded to remove the effects of outliers from the analysis.

origination rates. Once these characteristics are accounted for, other influences, such as location in an OMB-designated central city, play only a minor role in explaining disparities in mortgage lending.[2]

1. Discrimination in the Mortgage and Housing Markets—An Overview

The nation's housing and mortgage finance markets are highly efficient systems where most homebuyers can put down relatively small amounts of cash and obtain long-term funding at relatively small spreads above the lender's borrowing costs. Unfortunately, this highly efficient financing system does not work everywhere or for everyone. Studies have shown that access to credit often depends on improper evaluation of characteristics of the mortgage applicant and the neighborhood in which the applicant wishes to buy. In addition, though racial discrimination has become less blatant in the home purchase market, studies have shown that it is still widespread in more subtle forms. Partly as a result of these factors, the homeownership rate for minorities is substantially below that of whites.

Appendix A provided an overview of the homeownership gaps and lending disparities faced by minorities. A quick look at mortgage denial rates reported by the 1997 HMDA data reveals that minority denial rates were higher than those for white loan applicants. For lower-income borrowers, the conventional denial rate for African Americans was 1.7 times the denial rate for white borrowers, while for higher-income borrowers, the denial rate for African Americans was 2.5 times the rate for white borrowers. Similarly, the FHA denial rate for lower-income African Americans was 1.8 times the denial rates for lower-income white borrowers and twice as high for higher-income African Americans as for whites with similar incomes.

Several analytical studies, some of which are reviewed later in this section, show that these differentials in denial rates are not fully accounted for by differences in credit risk. Perhaps the most publicized example is a study by the Federal Reserve Bank of Boston, described in more detail below, which found that differential denial rates were most prevalent among marginal applicants.[3] Highly qualified borrowers of all races seemed to be treated equally, but in cases where there was some flaw in the application, white applicants seemed to be given the benefit of the doubt more frequently than minority applicants.

In addition to discrimination in the lending market, substantial evidence exists of discrimination in the housing market. The 1991 Housing Discrimination Study sponsored by HUD found that minority home buyers encounter some form of discrimination about half the time when they visit a rental or sales agent to ask about advertised housing.[4] The incidence of discrimination was higher for African Americans than for Hispanics and for homebuyers than for renters. For renters, the incidence of discrimination was 46 percent for Hispanics and 53 percent for African Americans. The incidence among buyers was 56 percent for Hispanics and 59 percent for African Americans.

While discrimination is rarely overt, minorities are more often told the unit of interest is unavailable, shown fewer properties, offered less attractive terms, offered less financing assistance, or provided less information than similarly situated non-minority homeseekers. Some evidence indicates that properties in minority and racially-diverse neighborhoods are marketed differently from those in White neighborhoods. Houses for sale in non-White neighborhoods are rarely advertised in metropolitan newspapers, open houses are rarely held, and listing real estate agents are less often associated with a multiple listing service.[5]

Discrimination, while not the only cause, contributes to the pervasive level of segregation that persists between African Americans and Whites in our urban areas. Because minorities tend to live in segregated neighborhoods, their difficulty in obtaining mortgage credit has a concentrated effect on the viability of their neighborhoods. In addition, there is evidence that denial rates are higher in minority neighborhoods regardless of the race of the applicant. The next section explores the issue of credit availability in neighborhoods in more detail.

2. Evidence About Access to Credit in Urban Neighborhoods

The viability of neighborhoods—whether urban, rural, or suburban—depends on the access of their residents to mortgage capital to purchase and improve their homes. While neighborhood problems are caused by a wide range of factors, including substantial inequalities in the distribution of the nation's income and wealth, there is increasing agreement that imperfections in the nation's housing and mortgage markets are hastening the decline of distressed neighborhoods. Disparate denial of credit based on geographic criteria can lead to disinvestment and neighborhood decline. Discrimination and other factors, such as inflexible and restrictive underwriting guidelines, limit access to mortgage credit and leave potential borrowers in certain areas underserved.

Data on mortgage credit flows are far from perfect, and issues regarding the identification of areas with inadequate access to credit are both complex and controversial. For this reason, it is essential to define ''underserved areas'' as accurately as possible from existing data. To provide the reasoning behind the Department's definition of underserved areas, this section first uses 1997 HMDA data to examine geographic variation in mortgage denial rates, and then it reviews three sets of studies that support HUD's definition. These include (1) studies examining racial discrimination against individual mortgage applicants, (2) studies that test whether mortgage redlining exists at the neighborhood level, and (3) studies that support HUD's targeted approach to measuring areas that are underserved by the mortgage market. In combination, these studies provide strong support for the definition of underseved areas chosen by HUD. The review of the economics literature draws heavily from Appendix B of the 1995 GSE Rule; readers are referred there for a more detailed treatment of issues discussed below.

a. HMDA Data on Mortgage Originations and Denial Rates

Home Mortgage Disclosure Act (HMDA) data provide information on the disposition of mortgage loan applications (originated, approved but not accepted by the borrower, denied, withdrawn, or not completed) in metropolitan areas. HMDA data include the census tract location of the property being financed and the race and income of the individual loan applicant. Therefore, it is a rich data base for analyzing mortgage activity in urban neighborhoods. HUD's analysis using HMDA data for 1997 shows that high-minority and low-income census tracts have both relatively high loan application denial rates and relatively low loan origination rates.

Table B.1 presents mortgage denial and origination rates by the minority composition and median income of census tracts for metropolitan areas. Two patterns are clear: Census tracts with higher percentages of minority residents have higher mortgage denial rates and lower mortgage origination rates than all-white or substantially-white tracts. For example, the denial rate for census tracts that are over 90 percent minority (28.8 percent) was more than twice that for census tracts with less than 10 percent minority (12.4 percent).

• Census tracts with lower incomes have higher denial rates and lower origination rates than higher income tracts. For example, mortgage denial rates declined from 26.8 to 8.4 percent as tract income increased from less than 60 percent of area median to over 150 percent of area median.[6] Similar patterns arose in HUD's analysis of 1993 and 1994 HMDA data (see Appendix B of the 1995 GSE Rule).

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[2] For the sake of brevity, in the remainder of this appendix, the term ''central city'' is used to mean ''OMB-designated central city.''

[3] Alicia H. Munnell, Lynn Browne, James McEneaney, and Geoffrey Tootell. 1996. ''Mortgage Lending in Boston: Interpreting HMDA Data,'' American Economic Review, 86(1) March:25–54.

[4] Margery A. Turner, Raymond J. Struyk, and John Yinger. Housing Discrimination Study: Synthesis, Washington, D.C., U.S. Department of Housing and Urban Development: 1991.

[5] Margery A. Turner, ''Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits,'' Housing Policy Debate, Vol. 3, Issue 2, 1992, pp. 185–215.

[6] The denial rates in Table B.1 are for home purchase mortgages. Denial rates are several percentage points lower for refinance loans than for purchase loans, but denial rates follow the same pattern for both types of loans: rising with minority concentration and falling with increasing income.

Table B.1

Origination and Denial Rates for Conventional Mortgages

Minority Percentage	Originations Per 100 Owner-Occupied Units (Purchases and Refinances) 1996	1997	Denial Rates (Home Purchases) 1996	1997
Less than 10%	8.8 %	8.8 %	11.5 %	12.4 %
10-20	8.1	8.5	14.1	15.0
20-30	7.3	7.8	17.1	18.3
30-40	6.5	7.0	19.7	20.3
40-50	6.1	6.6	21.5	22.9
50-60	6.0	6.4	22.5	22.8
60-70	5.9	6.3	23.7	24.1
70-80	5.8	6.4	24.6	24.1
80-90	5.4	5.8	25.9	25.8
90-100	4.3	5.0	29.7	28.8
All Tracts	7.9	8.2	14.4	15.3

Tract Income Relative to MSA Median	Originations Per 100 Owner-Occupied Units (Purchases and Refinances) 1996	1997	Denial Rates (Home Purchases) 1996	1997
Less than 20%	7.0 %	8.4 %	32.4 %	26.3 %
20-30	5.0	6.0	33.3	26.7
30-40	4.4	5.2	29.8	29.0
40-50	5.0	5.8	27.6	27.4
50-60	4.9	5.6	27.8	26.8
60-70	5.3	6.0	25.4	26.7
70-80	5.9	6.5	23.3	24.3
80-90	6.7	7.1	20.1	21.8
90-100	7.3	7.6	17.1	18.4
100-110	8.1	8.3	14.2	15.5
110-120	9.0	9.0	11.9	12.8
120-150	9.7	9.8	9.8	10.2
150+	9.1	9.1	8.2	8.4
All Tracts	7.9	8.2	14.4	15.3

Source: HUD analysis of 1996 and 1997 HMDA Data. Denial rate data exclude loans from nine lenders that primarily originate manufactured housing loans.

Table B.2

Mortgage Denial and Origination Rates By Minority and Income Characteristics of the Census Tract

Denial Rates (Purchase Mortgages Only)				
	Minority Composition			
Tract Income	< 30%	30-50%	50-100%	Total
Less Than 90%	21.9%	25.8%	27.7%	24.0%
90-120%	14.9%	20.3%	21.3%	15.6%
120+	9.1%	13.8%	16.8%	9.5%
Total	13.7%	21.3%	25.1%	15.3%
Origination Rates per 100 Owner Occupants (Purchase and Refinance Mortgages)				
	Minority Composition			
Tract Income	< 30%	30-50%	50-100%	Total
Less Than 90%	7.0	6.6	5.5	6.5
90-120%	8.5	6.7	6.2	8.3
120+	9.7	7.8	7.3	9.5
Total	8.7	6.8	5.8	8.2

Source: HUD analysis of 1997 HMDA Data. Data on denial rates exclude loans for nine lenders that primarily originate manufactured housing loans.

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Table B.2 illustrates the interaction between percent minority and tract income by aggregating the data in Table B.1 into six minority and income combinations. The low-minority (less than 30 percent minority), high-income (over 120 percent of area median) group has a denial rate of 9.1 percent and an origination rate of 9.7 loans per 100 owner occupants. The high-minority (over 50 percent), low-income (under 90 percent of area median) group has a denial rate of 27.7 percent and an origination rate of only 5.5 loans per 100 owner occupants. The other groupings fall between these two extremes.

The advantages of HUD's underserved area definition can be seen by examining the minority-income combinations highlighted in Table B.2. The sharp differences in denial rates and origination rates between the underserved and remaining served categories illustrate that HUD's definition delineates areas that have significantly less success in receiving mortgage credit. Underserved areas have almost twice the average denial rate of served areas (23.4 percent versus 12.2 percent) and two-thirds the average origination rate per 100 owner occupants (6.6 versus 9.1). HUD's definition does not include high-income (over 120 percent of area median) census tracts even if they meet the minority threshold. The mortgage denial rate (14.9) for high-income tracts with a minority share of population over 30 percent is much less than the denial rate (23.4) in underserved areas as defined by HUD, and only slightly above the average (12.2 percent) for all served areas.

b. Federal Reserve Bank Studies

The analysis of denial rates in the above section suggests that HUD's definition is a good proxy for identifying areas experiencing credit problems. However, an important question is the degree to which variations in denial rates reflect lender bias against certain kinds of neighborhoods and borrowers versus the degree to which they reflect the credit quality of the potential borrower (as indicated by the applicant's available assets, credit rating, employment history, etc.). Some studies of credit disparities have attempted to control for credit risk factors that might influence a lender's decision to approve a loan. Without fully accounting for the creditworthiness of the borrower, racial differences in denial rates cannot be attributed to lender bias.

The best example of accounting for credit risk is the study by researchers at the Federal Reserve Bank of Boston, which analyzed mortgage denial rates.[7] To control for credit risk, the Boston Fed researchers included 38 borrower and loan variables indicated by lenders to be critical to loan decisions. For example, the Boston Fed study included a measure of the borrower's credit history, which is a variable not included in other studies. The Boston Fed study found that minorities' higher denial rates could not be explained fully by income and credit risk factors. African Americans and Hispanics were about 60 percent more likely to be denied credit than Whites, even after controlling for credit risk characteristics such as credit history, employment stability, liquid assets, self-employment, age, and family status and composition. Although almost all highly-qualified applicants of all races were approved, differential treatment was observed among borrowers with more marginal qualifications.[8]

A subsequent reassessment and refinement of the data used by the Federal Reserve Bank of Boston confirmed the findings of that study.[9] William C. Hunter of the Federal Reserve Bank of Chicago confirmed that race was a factor in denial rates of marginal applicants. While denial rates were comparable for borrowers of all races with ''good'' credit ratings, among those with ''bad'' credit ratings or high debt ratios, minorities were significantly more likely to be denied than similarly-situated whites. The study concluded that the racial differences in denial rates were consistent with a cultural gap between white loan officers and minority applicants, and conversely, a cultural affinity with white applicants.

The two Fed studies concluded that the effect of borrower race on mortgage rejections persists even after controlling for legitimate determinants of lenders' credit decisions. Thus, they imply that variations in mortgage denial rates, such as given in Table B.2 are not determined entirely by borrower risk but reflect discrimination in the housing finance system. However, the independent race effect identified in these studies is still difficult to interpret. In addition to lender bias, access to credit can be limited by loan characteristics that reduce profitability[10] and by underwriting standards that have disparate effects on minority and lower-income borrowers and their neighborhoods.[11]

c. Controlling for Neighborhood Risk and Tests of the Redlining Hypothesis

In its deliberations leading up to FHEFSSA, Congress was concerned about geographic redlining—the refusal of lenders to make loans in certain neighborhoods regardless of the creditworthiness of individual applicants. During the 1980's and early 1990's, a number of studies using HMDA data (such as that reported in Tables B.1 and B.2) attempted to test for the existence of mortgage redlining. Consistent with the redlining hypothesis, these studies found lower volumes of loans going to low-income and high-minority neighborhoods.[12] However, such analyses were criticized because they did not distinguish between demand, risk, and supply effects[13]—that is, they didn't determine whether loan volume was low because families in high-minority and low-income areas were unable to afford home ownership and therefore were not applying for mortgage loans, or because borrowers in these areas were more likely to default on their mortgage obligations, or because lenders refused to make loans to creditworthy borrowers in these areas.[14] [15]

Recent statistical studies have sought to test the redlining hypothesis by more

[7] Alicia H. Munnell, Lynn E. Browne, James McEneaney, and Geoffrey M. B. Tootell, ''Mortgage Lending in Boston: Interpreting HMDA Data,'' American Economic Review, march 1996.

[8] A HUD study also found mortgage denial rates for minorities to be higher in ten metropolitan areas, even after controlling for credit risk. In addition, the higher denial rates observed in minority neighborhoods were not purely a reflection of the higher denial rates experienced by minorities. Whites experienced higher denial rates in some minority neighborhoods than in some predominantly white neighborhoods. Ann B. Schnare and Stuart A. Gabriel, ''The Role of FHA in the Provision of Credit to Minorities,''ICF Incorporated, prepared for the U.S. Department of Housing and Urban Development, April 25, 1994.

[9] William C. Hunter, ''The Cultural Affinity Hypothesis and Mortgage Lending Decisions,'' WP–95–8, Federal Reserve Bank of Chicago, 1995.

[10] Since upfront loan fees are frequently determined as a percentage of the loan amount, lenders are discouraged from making smaller loans in older neighborhoods, because such loans generate lower revenue and are less profitable to lenders.

[11] Traditional underwriting practices may have excluded some lower income families that are, in fact, creditworthy. Such families tend to pay cash, leaving them without a credit history. In addition, the usual front-end and back-end ratios applied to applicants' housing expenditures and other on-going costs may be too stringent for lower income households, who typically pay larger shares of their income for housing (including rent and utilities) than higher income households.

[12] These studies, which were conducted at the census tract level, typically involved regressing the number of mortgage originations (relative to the number of properties in the census tract) on characteristics of the census tract including its minority composition. A negative coefficient estimate for the minority composition variable was often interpreted as suggesting redlining. For a discussion of these models, see Eugene Perle, Kathryn Lynch, and Jeffrey Horner, ''Model Specification and Local Mortgage Market Behavior,'' Journal of Housing Research, Volume 4, Issue 2, 1993, pp. 225–243.

[13] For critques of the early HMDA studies, see Andrew Holmes and Paul Horvitz, ''Mortgage Redlining: Race, Risk, and Demand,'' The Journal of Finance, Volume 49, No. 1, March 1994, pp. 81–99; and Michael H. Schill and Susan M. Watcher, ''A Tale of Two Cities: Racial and Ethnic Geographic Disparities in Home Mortgage Lending in Boston and Philadelphia,'' Journal of Housing Research, Volume 4, Issue 2, 1993, pp. 245–276.

[14] Likely early HMDA studies, an analysis of deed transfer data in Boston found lower rates of mortgage activity in minority neighborhoods. The discrepancies held even after controlling for income, house values and other economic and non-racial factors that might explain differences in demand and housing market activity. The study concluded that ''the housing market and the credit market together are functioning in a way that has hurt African American neighborhoods in the city of Boston.'' Katherine L. Bradbury, Karl E. Case, and Constance R. Dunham, ''Geographic Patterns of Mortgage Lending in Boston, 1982–1987,'' New England Economic Review, September/October 1989, pp. 3–30.

[15] Using an analytical approach similar to that of Bradbury, Case, and Dunham, Anne Shlay found evidence of fewer mortgage loans originated in black census tracts in Chicago and Baltimore. See Anne Shlay, ''Not in That Neighborhood: The Effects of Population and Housing on the Distribution of Mortgage Finance within the Chicago SMSA,'' Social Science Research, Volume 17, No. 2, 1988, pp. 137–163; and ''Financing Community: Methods for Assessing Residential Credit Disparities, Market Barriers, and Institutional Reinvestment Performance in the Metropolis,'' Journal of Urban Affairs, Volume 11, No. 3, 1989, pp. 201–223.

completely controlling for differences in neighborhood risk and demand. The first two studies reviewed below are good examples of the more recent literature. In these studies, the explanatory power of neighborhood race is reduced to the extent that the effects of neighborhood risk and demand are accounted for; thus, they do not support claims of racially induced mortgage redlining. However, as explained below, these studies cannot reach definitive conclusions about redlining because segregation in our inner cities makes it difficult to distinguish the impacts of geographic redlining from the effects of individual discrimination.

Additional studies related to redlining and the credit problems facing low-income and minority neighborhoods are also summarized. Particularly important are studies that focus on the ''thin'' mortgage markets in these neighborhoods and the implications of lenders not having enough information about the collateral and other characteristics of these neighborhoods. The low numbers of house sales and mortgages originated in low-income and minority neighborhoods result in individual lenders perceiving these neighborhoods to be more risky. It is argued that lenders do not have enough historical information to project the expected default performance of loans in low-income and minority neighborhoods, which increases their uncertainty about investing in these areas.

Holmes and Horvitz Study. First, Andrew Holmes and Paul Horvitz used 1988–1991 HMDA data to examine variations of conventional mortgage originations across census tracts in Houston. Their single-equation regression model included as explanatory variables the economic viability of the loan, characteristics of properties in and residents of the tract (*e.g.,* house value, income, age distribution and education level), measures of demand (*e.g.,* recent movers into the tract and change in owner-occupied units between 1980 and 1990), and measures of credit risk (defaults on government-insured loans and change in tract house values between 1980 and 1990). To test the existence of racial redlining, the model also included as explanatory variables the percentages of African American and Hispanic residents in the tract and the increase in the tract's minority percentage between 1980 and 1990. Most of the neighborhood risk and demand variables were significant determinants of the flow of conventional loans in Houston. The coefficients of the racial composition variables were insignificant, which led Holmes and Horvitz to conclude that allegations of redlining in the Houston market could not be supported.

Schill and Wachter Study. Michael Schill and Susan Wachter posit that the probability that a lender will accept a specific mortgage application depends on characteristics of the individual loan application [16] and characteristics of the neighborhood where the property collateralizing the loan is located. Schill and Wachter include neighborhood risk proxies that are likely to affect the future value of the properties,[17] and they include the percentage of the tract population comprised by African Americans and Hispanics in order to test for the existence of racial discrepancies in lending patterns across census tracts.

Testing their model for conventional mortgages in Philadelphia and Boston, Schill and Wachter found that the applicant race variables—whether the applicant was African American or Hispanic—showed significant negative effects on the probability that a loan would be accepted. Schill and Wachter stated that this finding does not provide evidence of individual race discrimination because applicant race is most likely serving as a proxy for credit risk variables omitted from their model (*e.g.,* credit history, wealth and liquid assets). In an initial analysis that excluded the neighborhood risk variables from the model, the percentage of the census tract that was African American also showed a significant and negative coefficient, a result that is consistent with redlining. However, when the neighborhood risk proxies were included in the model along with the individual loan variables, the percentage of the census tract that was African American becomes insignificant. Thus, similar to Holmes and Horvitz, Schill and Wachter stated that ''once the set of independent variables is expanded to include measures that act as proxies for neighborhood risk, the results do not reveal a pattern of redlining.'' [18]

Other Redlining Studies. To highlight the methodological problems of single-equation studies of mortgage redlining, Fred Phillips-Patrick and Clifford Rossi develop a simultaneous equation model of the demand and supply of mortgages, which they estimate for the Washington, DC metropolitan area.[19] Phillips-Patrick and Rossi find that the supply of mortgages is negatively associated with the racial composition of the neighborhood, which leads them to conclude that the results of single-equation models (such as the one estimated by Holmes and Horvitz) are not reliable indicators of redlining or its absence. However, Phillips-Patrick and Rossi note that even their simultaneous equations model does not provide definitive evidence of redlining because important underwriting variables (such as credit history), which are omitted from their model, may be correlated with neighborhood race.

A few studies of neighborhood redlining have attempted to control for the credit history of the borrower, which is the main omitted variable in the redlining studies reviewed so far. Samuel Myers, Jr. and Tsze Chan, who study mortgage rejections in the state of New Jersey in 1990, develop a proxy for bad credit based on the reasons that lenders give in their HMDA reports for denying a loan.[20] They find that 70 percent of the gap in rejection rates cannot be explained by differences in Black and white borrower characteristics, loan characteristics, neighborhoods or bad credit. Myers and Chan conclude that the unexplained Black-white gap in rejection rates is a result of discrimination. With respect to the racial composition of the census tract, they find that Blacks are more likely to be denied loans in racially integrated or predominately-white neighborhoods than in predominately-Black neighborhoods. They conclude that middle-class Blacks seeking to move out of the inner city would face problems of discrimination in the suburbs.[21]

Geoffrey Tootell has authored two papers on neighborhood redlining based on the mortgage rejection data from the Boston Fed study.[22] Tootell's studies are important because they include a direct measure of borrower credit history, as well as the other underwriting, borrower, and neighborhood characteristics that are included in the Boston Fed data base; thus, his work does not have the problem of omitted variables, at least to the same extent as previous redlining studies.[23] Tootell finds that lenders in the Boston area do not appear to be redlining neighborhoods based on the racial composition of the census tract or the average income in the tract. Consistent with the Boston Fed and Schill and Wachter studies,

[16] Individual loan characteristics include loan size (economies of scale cause lenders to prefer large loans to small loans) and all individual borrower variables included in the HMDA data (the applicant's income, sex, and race).

[17] Their neighborhood risk proxies include median income and house value (inverse indicators of risk), percent of households receiving welfare, median age of houses, homeownership rate (an inverse indicator), vacancy rate, and the rent-to-value ratio (an inverse indicator). A high rent-to-value ratio suggests lower expectations of capital gains on properties in the neighborhood.

[18] Schill and Wachter, page 271. Munnell, *et al.* reached similar conclusions in their study of Boston. The found that the race of the individual mattered, but that once individual characteristics were controlled, racial composition of the neighborhood was insignificant.

[19] Fred J. Phillips-Patrick and Clifford V. Rossi, ''Statistical Evidence of Mortgage Redlining? A Cautionary Tale'', The Journal of Real Estate Research, Volume 11, Number 1 (1996), pp.13–23.

[20] Samuel L. Myers, Jr. and Tsze Chan, ''Racial Discrimination in Housing Markets: Accounting for Credit Risk'', Social Science Quarterly, Volume 76, Number 3 (September 1995), pp. 543–561.

[21] For another study that uses HMDA data on reasons for denial to construct a proxy for bad credit, see Steven R. Holloway, ''Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio'', Annals of the Association of American Geographers, 88(2), 1998, pp. 252–276. Holloway finds that mortgage denial rates are higher for black applicants (particularly those who are making large loan requests) in all-white neighborhoods than in minority neighborhoods, while the reverse is true for white applicants making small loan requests.

[22] See Geoffrey M. B. Tootell, ''Redlining in Boston: Do Mortgage Lenders Discriminate Against Neighborhoods?'', Quarterly Journal of Economics, 111, November, 1996, pp. 1049–1079; and ''Discrimination, Redlining, and Private Mortgage Insurance'', unpublished manuscript, October , 1995.

[23] Tootell notes that both omitted variables and the strong correlation between borrower race and neighborhood racial composition in segregated cities have made it difficult for previous studies to distinguish the impacts of geographic redlining from the effects of individual borrower discrimination. He can unravel these effects because he includes a direct measure of credit history and because over half of minority applicants in the Boston Fed data base applied for mortgages in predominately white areas.

Tootell finds that it is the race of the applicant that mostly affects the mortgage lending decision; the location of the applicant's property appears to be far less relevant. However, he does find that the decision to require private mortgage insurance depends on the racial composition of the neighborhood. Tootell suggests that, rather than redline themselves, mortgage lenders may rely on private mortgage insurers to screen applications from minority neighborhoods. Tootell also notes that this indirect form of redlining would increase the price paid by applicants from minority areas that are approved by private mortgage insurers.

In a 1999 paper, Stephen Ross and Geoffrey Tootell use the Boston Fed data base to take a closer at both lender redlining and the role of private mortgage insurance (PMI) in neighborhood lending.[24] They have two main findings. First, mortgage applications for properties in low-income neighborhoods are more likely to be denied if the applicant does not apply for PMI. Ross and Tootell conclude that their study provides the first direct evidence based on complete underwriting data that some mortgage applications may have been denied based on neighborhood characteristics that legally should not be considered in the underwriting process. Second, mortgage applicants are often forced to apply for PMI when the housing units are in low-income neighborhoods. Ross and Tootell conclude that lenders appear to be responding to CRA by favoring low-income tracts once PMI has been received, and this effect counteracts the high denial rates for applications without PMI in low-income tracts.

Studies of Information Externalities. A recent group of studies that focus on economies of scale in the collection of information about neighborhood characteristics has implications for the identification of underserved areas and understanding the problems of mortgage access in low-income and minority neighborhoods. William Lang and Leonard Nakamura argue that individual home sale transactions generate information which reduce lenders' uncertainty about property values, resulting in greater availability of mortgage financing.[25] Conversely, appraisals in neighborhoods where transactions occur infrequently will tend to be more imprecise, resulting in greater uncertainty to lenders regarding collateral quality, and more reluctance by them in approving mortgage loans in neighborhoods with thin markets. As a consequence, ''prejudicial practices of the past may lead to continued differentials in lending behavior.''

If low-income or minority tracts have experienced relatively few recent transactions, the resulting lack of information available to lenders will result in higher denial rates and more difficulty in obtaining mortgage financing, independently of the level of credit risk in these neighborhoods.

A number of empirical studies have found evidence consistent with the notion that mortgage credit is more difficult to obtain in areas with relatively few recent sales transactions. Some of these studies have also found that low transactions volume may contribute to disparities in the availability of mortgage credit by neighborhood income and minority composition.

Paul Calem found that, in low-minority tracts, higher mortgage loan approval rates were associated with recent sales transactions volume, consistent with the Lang and Nakamura hypothesis.[26] While this effect was not found in high-minority tracts, he concludes that ''informational returns to scale'' contribute to disparities in the availability of mortgage credit between low-minority and high-minority areas. Empirical research by David Ling and Susan Wachter finds that recent tract-level sales transaction volume does significantly contribute to mortgage loan acceptance rates in Dade County, Florida, also consistent with the Lang and Nakamura hypothesis.[27]

Robert Avery, Patricia Beeson, and Mark Sniderman find significant evidence of economies associated with the scale of operation of individual lenders in a neighborhood.[28] They conclude that ''The inability to exploit these economies of scale is found to explain a substantial portion of the higher denial rates observed in low-income and minority neighborhoods, where the markets are generally thin.'' Low-income and minority neighborhoods often suffer from low transactions volume, and low transactions volume represents a barrier to the availability of mortgage credit by making mortgage lenders more reluctant to approve and originate mortgage loans in these areas.

d. Geographic Dimensions of Underserved Areas—Targeted Versus Broad Approaches

HUD's definition of underserved areas is a targeted neighborhood definition, rather than a broad definition that would encompass entire cities. It also focuses on these neighborhoods experiencing the most severe credit problems rather than neighborhoods experiencing only moderate difficulty obtaining credit. During the regulatory process leading to the 1995 Rule, some argued that underserved areas under this goal should be defined to include the entire central city. HUD concluded that such broad definitions were not a good proxy for mortgage credit problems; to use them would allow the GSEs to focus on wealthier parts of cities rather than on neighborhoods experiencing credit problems. This section reports findings from several analyses by HUD and academic researchers that support defining underserved areas in terms of the minority and/or income characteristics of census tracts, rather than in terms of a broad definition such as all areas of all central cities.

Socioeconomic Characteristics. The targeted nature of HUD's definition can be seen from the data presented in Table B.3, which show that families living in underserved areas experience much more economic and social distress than families living in served areas. For example, the poverty rate in underserved census tracts is 20.1 percent, or almost four times the poverty rate (5.8 percent) in served census tracts. The unemployment rate and the high-school drop out rate are also higher in underserved areas. In addition, there are nearly three times more female-headed households in underserved areas (11.5 percent) than in served areas (4.3 percent)

The majority of units in served areas are owner-occupied while the majority of units in underserved areas are renter-occupied.

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[24] Stephen L. Ross and Geoffrey M. B. Tootell, ''Redlining, the Community Reinvestment Act, and Private Mortgage Insurance'', unpublished manuscript, March, 1999.

[25] Lang, William W. and Leonard I. Nakamura, ''A Model of Redlining,'' Journal of Urban Economics, Volume 33, 1993, pp. 223–234.

[26] Calem, Paul S. ''Mortgage Credit Availability in Low- and Moderate-Income Minority Neighborhoods: Are Information Externalities Critical?'' Journal of Real Estate Finance and Economics, Volume 13, 1996, pp. 71–89.

[27] Ling, David C. and Susan M. Wachter, ''Information Externalities and Home Mortgage Underwriting,'' Journal of Urban Economics, Volume 44, 1998, pp. 317–332.

[28] Robert B. Avery, Patricia E. Beeson, and Mark S. Sniderman, ''Neighborhood Information and Home Mortgage Lending,'' Journal of Urban Economics, Volume 45, 1999, pp. 287–310.

Table B.3

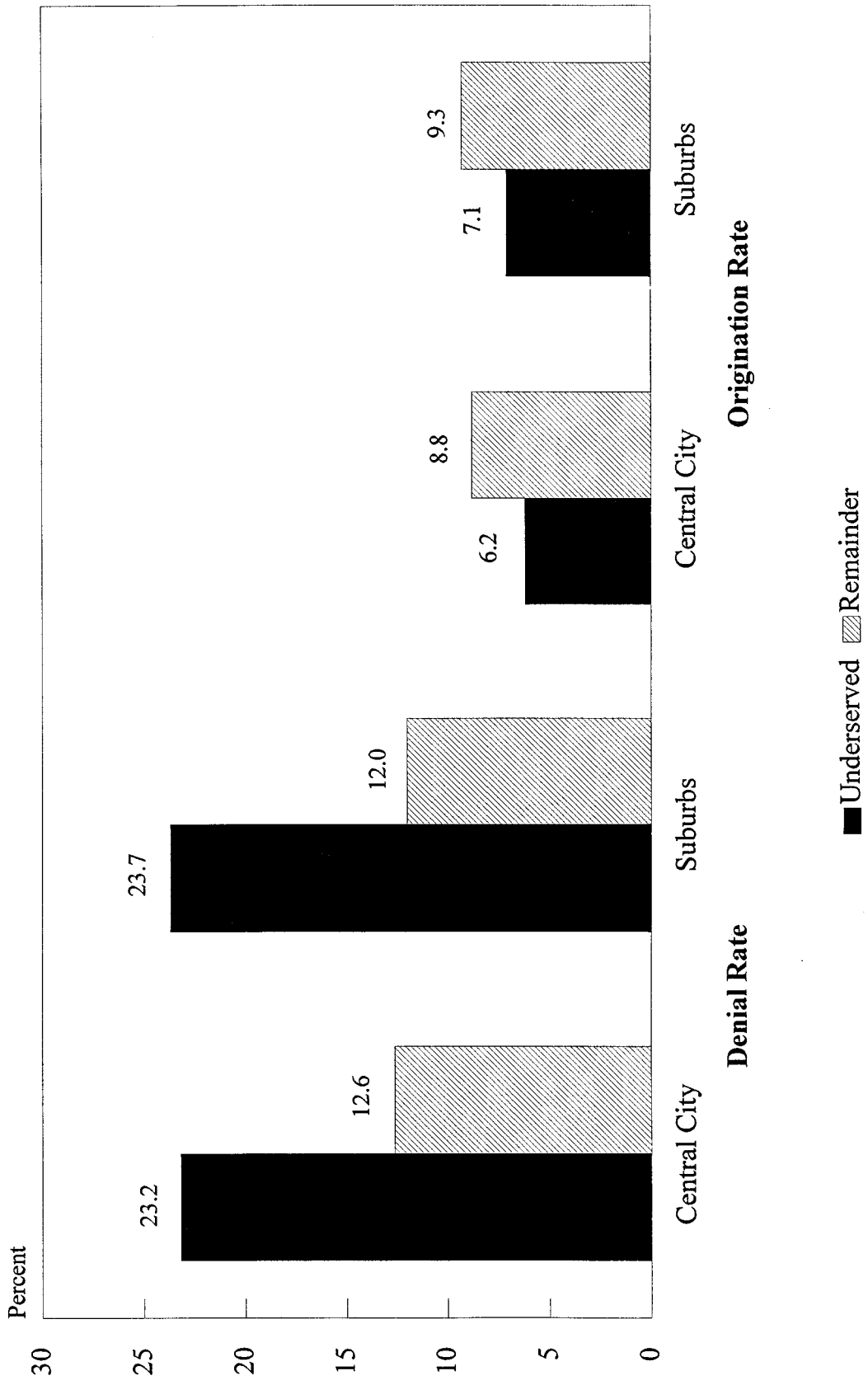
Socioeconomic Characteristics of Underserved Areas in Metropolitan Areas

	Served Tracts	Underserved Tracts	Total
Census Tracts	23,819	21,587	45,406
Households	41,379,104	31,839,636	73,218,740
Population	110,037,735	87,578,825	197,616,560
Unemployment Rate	4.2%	9.0%	6.2%
Poverty Rate	5.8%	20.1%	12.1%
Dropout Rate	10.3%	20.4%	14.8%
Percent Female Household With Children	12.1%	28.3%	19.7%
Percent African-American	3.8%	23.6%	12.6%
Percent Minority	11.1%	46.6%	26.8%
Percent Owner-Occupied	71.3%	47.6%	61.0%
Percent Renter	28.6%	52.4%	38.9%

Source: 1990 Census.

Figure B.1

1997 Denial And Origination Rates Underserved Areas And Remainder By Central Cities And Suburbs



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Credit Characteristics. Tables B.1 and B.2 documented the relatively high denial rates and low mortgage origination rates in underserved areas as defined by HUD. This section extends that analysis by comparing underserved and served areas within central cities and suburbs. Figure B.1 shows that HUD's definition targets central city neighborhoods that are experiencing problems obtaining mortgage credit. The 23.2 percent denial rate in these neighborhoods in 1997 is twice the 12.6 percent denial rate in the remaining areas of central cities. A broad, inclusive definition of ''central city'' that includes all areas of all OMB-designated central cities would include these ''remaining'' portions of cities. Figure B.1 shows that these areas, which account for approximately 43 percent of the population in OMB-designated central cities, appear to be well served by the mortgage market. As a whole, they are not experiencing problems obtaining mortgage credit. [29]

HUD's definition also targets underserved census tracts in the suburbs as well as in central cities—for example, the average denial rate in underserved suburban areas (23.7 percent) is more than twice that in the remaining served areas of the suburbs (12.0 percent). Low-income and high-minority suburban tracts appear to have credit problems similar to their central city counterparts. These suburban tracts, which account for 40 percent of the suburban population, are encompassed by the definition of other underserved areas.

Another alternative definition proposed by some in 1995 would have relaxed HUD's definition by increasing the income threshold from 90 percent to 100 percent of area median income and by reducing the minority threshold from 30 percent to 20 percent of tract population. This definition would include all areas covered by HUD's definition as well as 5,367 additional census tracts where median income is between 90 and 100 percent of area median or minorities comprise 20–30 percent of tract population. As HUD argued in the 1995 GSE Rule, these tracts do not appear to be experiencing problems obtaining mortgage credit. Their 17.8 percent mortgage denial rate is not much above the average of 15.3 percent and significantly below the 23.4 percent denial rate in tracts covered by HUD's Geographically Targeted Goal.

As explained in the Preamble, HUD is asking for public comment on two options that would tighten the targeting of the underserved definition reducing the number of qualifying census tract. The first option would enhance the definition of the tract income ratio and reduce the ceiling of the qualifying tract income ratio from 90 percent to 80 percent of area median income. The definition of tract income ratio would be enhanced as follows: the definition would change from tract median income as a percent of MSA median income to tract median income as a percent of the greater of either the national metropolitan median income or the MSA median income.

Applying the definition changes the current definition in two ways: (1) 994 tracts, with an average denial rate of 26.8, would be added, and (2) 2,500 tracts, with an average denial rate of 17.8 percent, would be dropped due to reducing the income threshold to 80 percent. Of the tracts that would be dropped, the denial rate is not much higher than the average denial rate for all metropolitan areas, which is 15.3 percent. This suggests that these areas are not experiencing severe problems in obtaining mortgage credit and should not be targeted.

The second option would change the definition of underserved areas to qualify census tracts with minority population of 50 percent, an increase from the current definition of 30 percent. An increase in the tract minority population would focus GSE purchases in high-minority neighborhoods that have been traditionally underserved by the mortgage market. One shortcoming of this option is that it would exclude 1,045 tracts with minority population between 30 and 50 percent which have high denial rates (20.2 percent).

Shear, Berkovec, Dougherty, and Nothaft Study. William Shear, James Berkovec, Ann Dougherty, and Frank Nothaft conducted an analysis of mortgage flows and application acceptance rates in 32 metropolitan areas that supports a targeted definition of underserved areas.[30] They found: (a) Low-income census tracts and tracts with high concentrations of African American and Hispanic families had lower rates of mortgage applications, originations, and acceptance rates; [31] and (b) once census tract influences were accounted for, central city location had only a minimal effect on credit flows.

Shear, Berkovec, Dougherty, and Nothaft recognized that it is difficult to interpret their estimated minority effects—the effects may indicate lender discrimination, supply and demand effects not included in their model but correlated with minority status, or some combination of these factors. They explain the implications of their results for measuring underserved areas as follows:

While it is not at all clear how we might rigorously define, let alone measure, what it means to be underserved, it is clear that there are important housing-related problems associated with certain location characteristics, and it is possible that, in the second or third best world in which we live, mortgage markets might be useful in helping to solve some of these problems. We then might use these data to help single out important areas or at least eliminate some bad choices. * * * The regression results indicate that income and minority status are better indicators of areas with special needs than central city location.[32]

Avery, Beeson, and Sniderman Study. Robert Avery, Patricia Beeson, and Mark Sniderman of the Federal Reserve Bank of Cleveland presented a paper specifically addressing the issue of underserved areas in the context of the GSE legislation.[33] Their study examines variations in application rates and denial rates for all individuals and census tracts included in the 1990 and 1991 HMDA data base. They seek to isolate the differences that stem from the characteristics of the neighborhood itself rather than the characteristics of the individuals that apply for loans in the neighborhood or lenders that happen to serve them. Similar to the studies of redlining reviewed in the previous section, Avery, Beeson and Sniderman hypothesize that variations in mortgage application and denial rates will be a function of several risk variables such as the income of the applicant and changes in neighborhood house values; they test for independent racial effects by adding to their model the applicant's race and the racial composition of the census tract. Econometric techniques are used to separate individual applicant effects from neighborhood effects.

Based on their empirical work, Avery, Beeson and Sniderman reach the following conclusions:

The individual applicant's race exerts a strong influence on mortgage application and denial rates. African American applicants, in particular, have unexplainably high denial rates.

• Once individual applicant and other neighborhood characteristics are controlled for, overall denial rates for purchase and refinance loans were only slightly higher in minority census tracts than non-minority census tracts.[34] For white applicants, on the other hand, denial rates were significantly higher in minority tracts.[35] That is,

[29] The Preamble to the 1995 Rule provides additional reasons why central city location should not be used as a proxy for underserved areas.

[30] William Shear, James Berkovec, Ann Dougherty, and Frank Nothaft, ''Unmet Housing Needs: The Role of Mortgage Markets,'' Journal of Housing Economics, Volume 4 , 1996, pp. 291–306. These researchers regressed the number of mortgage originations per 100 properties in the census tract on several independent variables that were intended to account for some of the demand and supply (i.e., credit risk) influences at the census tract level. The tract's minority composition and central city location were included to test if these characteristics were associated with underserved neighborhoods after controlling for the demand and supply variables. Examples of the demand and supply variables at the census tract level include: tract income relative to the area median income, the increase in house values between 1980 and 1990, the percentage of units boarded up, and the age distributions of households and housing units. See also Susan Wharton Gates, ''Defining the Underserved,'' Secondary Mortgage Markets, 1994 Mortgage Market Review Issue, 1995, pp. 34–48.

[31] For example, census tracts at 80 percent of area median income were estimated to have 8.6 originations per 100 owners as compared with 10.8 originations for tracts over 120 percent of area median income.

[32] Shear *et al.,* p. 18.

[33] See Avery, *et al.*

[34] Avery *et al.* find very large unadjusted differences in denial rates between white and minority neighborhoods, and although the gap is greatly reduced by controlling for applicant characteristics (such as race and income) and other census tract characteristics (such as house price and income level), a significant difference between white and minority tracts remains (for purchase loans, the denial rate difference falls from an unadjusted level of 16.7 percent to 4.4 percent after controlling for applicant and other census tract characteristics, and for refinance loans, the denial rate difference falls from 21.3 percent to 6.4 percent). However, when between-MSA differences are removed, the gap drops to 1.5 percent and 1.6 percent for purchase and refinance loans, respectively. See Avery, *et al.,* p. 16.

[35] Avery, *et al.,* page 19, note that, other things equal, a black applicant for a home purchase loan

Continued

minorities have higher denial rates wherever they attempt to borrow but whites face higher denials when they attempt to borrow in minority neighborhoods. In addition, Avery *et al.* found that home improvement loans had significantly higher denial rates in minority neighborhoods. Given the very strong effect of the individual applicant's race on denial rates, Avery *et al.* note that since minorities tend to live in segregated communities, a policy of targeting minority neighborhoods may be warranted.

Other findings are:

The median income of the census tract had strong effects on both application and denial rates for purchase and refinance loans, even after other variables were accounted for.

• There is little difference in overall denial rates between central cities and suburbs, once individual applicant and census tract characteristics are controlled for. Avery, Beeson and Sniderman conclude that a tract-level definition is a more effective way to define underserved areas than using the list of OMB-designated central cities as a proxy.

e. Conclusions From HUD's Analysis and the Economics Literature About Urban Underserved Areas

The implications of studies by HUD and others for defining underserved areas can be summarized briefly. First, the existence of large geographic disparities in mortgage credit is well documented. HUD's analysis of HMDA data shows that low-income and high-minority neighborhoods receive substantially less credit than other neighborhoods and fit the definition of being underserved by the nation's credit markets.

Second, researchers are testing models that more fully account for the various risk, demand, and supply factors that determine the flow of credit to urban neighborhoods. The studies by Holmes and Horvitz, Schill and Wachter, and Tootell are examples of this research. Their attempts to test the redlining hypothesis show the analytical insights that can be gained by more rigorous modeling of this issue. However, the fact that our urban areas are highly segregated means that the various loan, applicant, and neighborhood characteristics currently being used to explain credit flows are often highly correlated with each other which makes it difficult to reach definitive conclusions about the relative importance of any single variable such as neighborhood racial composition. Thus, their results are inclusive and, thus, the need continues for further research on the underlying determinants of geographic disparities in mortgage lending.[36]

Finally, much research strongly supports a targeted definition of underserved areas. Studies by Shear, *et al.* and Avery, Beeson, and Sniderman conclude that characteristics of both the applicant and the neighborhood where the property is located are the major determinants of mortgage denials and origination rates—once these characteristics are controlled for, other influences such as central city location play only a minor role in explaining disparities in mortgage lending. HUD's analysis shows that both credit and socioeconomic problems are highly concentrated in underserved areas within central cities and suburbs. The remaining, high-income portions of central cities and suburbs appear to be well served by the mortgage market.

HUD recognizes that the mortgage origination and denial rates forming the basis for the research mentioned in the preceding paragraph, as well as for HUD's definition of underserved areas, are the result of the interaction of individual risk, demand and supply factors that analysts have yet to fully disentangle and interpret. The need continues for further research addressing this problem. HUD believes, however, that the economics literature is consistent with a targeted rather than a broad approach for defining underserved areas.

C. Consideration of Factors 1 and 2 in Nonmetropolitan Areas: The Housing Needs of Underserved Rural Areas and the Housing, Economic, and Demographic Conditions in Underserved Rural Areas

Because of the absence of HMDA data for rural areas, the analysis for metropolitan underserved areas cannot be carried over to non-metropolitan areas. Based on discussions with rural lenders in 1995, the definition of underserved rural areas was established at the county level, since such lenders usually do not make distinctions on a census tract basis. But this definition parallels that used in metropolitan areas—specifically, a nonmetro county is classified as an underserved area if median income of families in the county does not exceed 95 percent of the greater of state nonmetro or national nonmetro median income, or minorities comprise 30 percent or more of the residents and the median income of families in the county does not exceed 120 percent of state nonmetro median income. For nonmetro areas the median income component of the underserved definition is broader than that used for metropolitan areas. While tract income is compared with area income for metropolitan areas, in rural counties income is compared with ''enhanced income''—the greater of state nonmetro income and national nonmetro income. This is based on HUD's analysis of 1990 census data, which indicated that comparing county nonmetro income only to state nonmetro income would lead to the exclusion of many lower-income low-minority counties from the definition, especially in Appalachia. Underserved counties account for 57 percent (8,091 of 14,419) of the census tracts and 54 percent of the population in rural areas. By comparison, the definition of metropolitan underserved areas encompassed 47 percent of metropolitan census tracts and 44 percent of metropolitan residents.

The county-wide definition of rural underserved areas could give the GSEs an incentive to purchase mortgages in the ''better served'' portions of underserved counties which may face few, if any, barriers to accessing mortgage credit in rural areas. This issue is discussed in more detail in the analysis of the GSEs' purchases below.

The demographic characteristics of served and underserved counties are first presented in this section. Next, a literature review of recent studies provides an overview of rural mortgage markets, GSE activity, and the growing demand for manufactured housing in rural housing markets. It also discusses characteristics of rural housing markets that lead to higher interest rates and mortgage access problems and makes some policy recommendations for addressing market inefficiencies.

1. Demographics

As discussed, majorities of rural households and rural counties fall under the definition of underserved areas. As shown in Table B.4, rural underserved counties have higher unemployment, poverty rates, minority shares of households and homeownership rates than rural served counties. The poverty rate in underserved rural counties (21.2 percent) is nearly twice that in served rural counties (12.2 percent). Joblessness is more common, with average unemployment rates of 8.3 percent in underserved counties and 5.9 percent in served counties. Minorities make up 20.8 percent of the residents in underserved counties and 7.4 percent in served counties. Homeownership is slightly higher in underserved counties (72.4 percent) than in served counties (70.8 percent).

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is 3.7 percent more likely to have his/her application denied in an all-minority tract than in an all-white tract, while a white applicant from an all-minority tract would be 11.5 percent more likely to be denied.

[36] Methodological and econometric challenges that researchers will have to deal with are discussed in Mitchell Rachlis and Anthony Yezer, ''Serious Flaws in Statistical Tests for Discrimination in Mortgage Markets,'' Journal of Housing Research, Volume 4, 1993, pp. 315–336.

Table B.4

Socioeconomic Characteristics of Underserved Counties in Non-Metropolitan Areas

	Served Counties	Underserved Counties	Total
Counties	786	1,511	2,297
Households	8,618,519	10,097,825	18,716,344
Population	23,075,383	27,467,972	50,543,355
Unemployment Rate	5.9%	8.3%	7.1%
Poverty Rate	12.2%	21.2%	17.1%
Dropout Rate	16.3%	22.7%	19.8%
Percent Female Household With Children	14.3%	17.5%	16.1%
Percent African-American	3.9%	12.4%	8.5%
Percent Minority	7.4%	20.8%	14.7%
Percent Owner-Occupied	70.8%	72.4%	71.6%
Percent Renter	29.2%	27.6%	28.4%

Source: 1990 Census.

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Some differences exist between metro and nonmetro underserved areas. The definition is somewhat more inclusive in nonmetro areas—the majority of the nonmetro population lives in underserved counties, while the majority of the metropolitan population lives in served areas. The majority of units in underserved metropolitan areas are occupied by renters, while the majority of units in underserved rural counties are occupied by owners. But poverty and unemployment rates are higher in underserved areas than in served areas in both nonmetropolitan and metropolitan areas.

2. Literature Review

Research related to housing and mortgage finance issues in rural areas is reviewed in this section. It finds that lack of competition between rural lenders and lack of participation in secondary mortgage markets may contribute to higher interest rates and lower mortgage availability in rural areas. The mortgages purchased by the GSEs on properties in underserved counties are not particularly focused on lower-income borrowers and first-time homebuyers, which suggests that additional research needs to be conducted to target areas in nonmetropolitan areas which experience difficulty accessing mortgage credit. The role of manufactured housing in providing affordable housing in rural areas is also discussed.

Mikesell Study (1998).[37] A study by Jim Mikesell provides an overview of mortgage lending in rural areas. It finds that home loans in rural areas have higher costs, which can be attributed to at least three factors that characterize rural mortgage markets. First, the fixed cost associated with rural lending may be higher as a result of the smaller loan size and remoteness of many rural areas. Second, there are fewer mortgage lenders in rural areas competing for business, which may account for higher interest rates. Third, the secondary mortgage market is not as well developed as in metropolitan areas.

Higher interest rates for rural mortgages are documented by the Federal Housing Finance Board's monthly survey of conventional home purchase mortgages. On average, relative to rates on mortgages in urban areas, rates on mortgages in rural areas in 1997 were 8 basis points (bp) higher on 30-year fixed rate mortgages (FRMs), 18 bp higher for 15-year FRMs, 38 bp higher for adjustable-rate mortgages (ARMs), and 52 bp higher for nonstandard loans.[38] The higher rates in rural areas translate into differences in monthly payments of $3 to $16 for a $100,000 mortgage.

Mikesell finds that property location and small loan size are two factors that make lending more costly in rural areas. Borrower characteristics, such as income, assets, and credit history, and lender characteristics, such as ownership, size, and location, might influence loan pricing, but the influence of these factors could not be tested due to lack of data.

Rural-based lenders are fewer and originate a smaller volume of loans than their urban counterparts. These factors contribute to less competition between rural lenders and a less efficient housing finance market, which result in higher costs for rural borrowers.

Rural lenders are less likely than urban lenders to participate in the secondary mortgage market. As a result, rural borrowers do not receive the benefits associated with the secondary market—the increased competition between lenders, the greater potential supply of mortgage financing, and the alignment of financing costs more closely with those in urban markets.

Some obstacles for rural lenders participating in the secondary market are that borrower characteristics and remote properties may not conform to the secondary market's underwriting standards. Rural households may have their borrowing capacity reduced by loan qualification standards which discount income that varies widely from year to year and income from self-employment held for less than several years. Rural properties' may have one or more of the following characteristics which preclude a mortgage from being purchased by the GSEs: Excessive distance to a firehouse, unacceptable water or sewer facilities, location on a less-than-all-weather road, and dated plumbing or electrical systems.

Mikesell concludes that increased participation by rural lenders in the secondary mortgage market would bring down lending costs and offset some of the higher costs characteristic of rural lending, and that HUD's goals for the GSEs could encourage such increased participation.

MacDonald Study.[39] **This study investigates variations in GSE market shares among a sample of 426 non-metropolitan counties in eight census divisions. Conventional conforming mortgage originations are estimated using residential sales data, adjusted to exclude non-conforming mortgages. Multivariate analysis is used to investigate whether the GSE market share differs significantly by location, after controlling for the economic, demographic, housing stock, and credit market differences among counties that could affect use of the secondary markets by lenders.**[40]

MacDonald has four main findings regarding mortgage financing and the GSEs' purchases in rural mortgage markets. First, smaller, poorer and less rapidly growing non-metro areas have less access to mortgage credit than larger, wealthier and more rapidly growing areas. Second, the mortgages that are originated in the former areas are seldom purchased by the GSEs. Third, higher-income borrowers are more likely, and first-time homebuyers are less likely, to be served by the GSEs in underserved than in served areas. This suggests that the GSEs are not reaching out to marginal borrowers in underserved nonmetropolitan areas. Finally, the GSEs serve a smaller proportion of the low-income market in rural areas than do depository institutions. This finding is consistent with studies of the GSEs' affordable lending performance in metropolitan areas.

With regard to the GSEs' underwriting guidelines MacDonald makes two points. First, the GSEs' purchase guidelines may adversely affect non-metro areas where many borrowers are seasonally- or self-employed and where houses pose appraisal problems. Second, MacDonald speculates that mortgage originators in nonmetropolitan areas may interpret guidelines too conservatively, or may not try to qualify non-traditional borrowers for mortgages.

MacDonald also echoes the findings of Mikesell that the existence and extent of mortgage lending problems are difficult to identify in many rural areas because of the lack of comprehensive mortgage lending data. Problems that have been identified include the lack of market competition among small, conservative lending institutions typical in rural and non-metropolitan areas; consolidation and other changes in the financial services industry, which may have different consequences in rural areas than in urban areas; lack of access to government housing finance programs in more rural locations; and weak development of secondary market sources of funds in rural areas, exacerbating liquidity problems.

MacDonald discusses briefly the importance of low-cost homeownership alternatives in rural areas. One alternative is manufactured (mobile) housing. In general, manufactured housing is less costly to construct than site-built housing. Manufactured housing makes up more than 25 percent of the housing stock in rural counties in the South and Mountain states.

MacDonald concludes that the lower participation of the GSEs in underserved areas compared with served areas may result from additional risk components for some borrowers and from lack of sophistication by the lenders that serve

[37] Mikesell, Jim. Can Federal Policy Changes Improve the Performance of Rural Mortgage Markets, Economic Research Service, U.S. Department of Agriculture, Issues in Agricultural and Rural Finance. Agriculture Information Bulletin No. 724–12, August 1998.

[38] Standard mortgage types are 30-year fixed-rate mortgages, 15-year FRMs and 30-year adjustable rate mortgages (ARMs). These are the ones most often traded in the secondary markets. Nonstandard mortgages generally have shorter terms than the standard mortgages.

[39] MacDonald, Heather. Fannie Mae and Freddie Mac in Rural Housing Markets: Does Space Matter? Study funded as part of the 1997 GSE Small Grants by HUD's Office of Policy Development and Research.

[40] MacDonald constructs a county-level mortgage market data in rural areas using information collected by the Department of Revenue for counties and states. Annual Sales Ratio Studies conducted by many states' Department of Revenue provide the number of sales for different property types. This is done by using residential sales recorded for property tax purposes. Other county-level variables used to compare rural counties are obtained from the 1990 Census of Population and Housing and Bureaus of labor Statistics. Data obtained from Census included county populations, racial composition, a variety of housing stock characteristics like home ownership rates, vacancy rates, proportion of owner-occupied mobile homes, median housing value in 1990, median age of the housing stock, proportion of units with complete plumbing, and access to infrastructure, *e.g.,* public roads and sewage systems. Data collected from the Bureau of Labor Statistics included unemployment rates and residential building permits.

small non-metro markets. In smaller and poorer counties, low volumes of loan sales to the GSEs may be a result of lower incomes and smaller populations. These counties may not have sufficient loan-generating activity to justify mortgage originators pursuing secondary market outlets.

The Role of Manufactured Housing.[41] **The Joint Center for Housing Studies at Harvard University conducted a comprehensive study of the importance of manufactured housing as an affordable housing choice in rural communities. In all segments of the housing market, but especially in rural areas and among low-income households, manufactured housing is growing. Based on the American Housing Survey, in 1985, 61 percent of manufactured housing stock was located in rural areas compared with 70 percent in 1993. Between 1985 and 1993, manufactured housing increased over 2.2 percent annually while all other housing increased 0.7 percent per year. In 1993, 6.0 percent (or 6 million) of households lived in manufactured housing.**

Since the 1970's, the face of manufactured housing has changed. Once a highly mobile form of recreational housing in this country, today manufactured housing provides basic quality, year-round housing for millions of American households. Most earlier units were placed in mobile home parks or on leased parcels of land. Today an increasing number of units are owned by households that also own the land on which the manufactured home is located.

Manufactured housing's appeal lies in its affordability. The low purchase price, downpayments, and monthly cash costs of manufactured housing provide households who are priced out of the conventional housing market a means of becoming homeowners. The occupants of manufactured housing on average are younger, have less income, have less education and are more often white than occupants of single-family detached homes. This type of housing is often found in areas with persistent poverty, retirement destinations, areas for recreation and vacations, and commuting counties.

The manufactured housing industry is well positioned for continued growth. The affordability of manufacturing housing is increasingly attractive to the growing ranks of low-income households. Manufactured housing is becoming more popular among first-time homebuyers and the elderly, both of which are growing segments of the housing market. The migration of people to the South, where manufactured housing is already highly accepted, and to metropolitan fringes will further increase the demand for this type of housing.[42]

D. Factor 3: Previous Performance and Effort of the GSEs in Connection With the Central Cities, Rural Areas and Other Underserved Areas Goal

As discussed in Sections B and C, HUD has structured the Geographically Targeted Goal to increase mortgage credit to areas underserved by the mortgage markets. This section looks at the GSEs' past performance to determine the impact the Geographically Targeted Goal is having on borrowers and neighborhoods with particular emphasis on underserved areas. Section D.1 reports the past performance of each GSE with regard to the Geographically Targeted Goal. Section D.2 then examines the role that the GSEs are playing in funding single-family mortgages in underserved urban neighborhoods based on HUD's analysis of GSE and HMDA data. Section D.3 concludes this section with an analysis of the GSEs' purchases in rural (nonmetropolitan) areas.

1. GSE Performance on the Geographically Targeted Goal

This section discusses each GSE's performance under the Geographically Targeted Goal over the 1993–98 period. The data presented here are ''official results''—i.e., they are based on HUD's in-depth analysis of the loan-level data submitted annually to the Department, subject and the counting provisions contained in Subpart B of HUD's December 1, 1995 Regulation of Fannie Mae and Freddie Mac. As explained below, in some cases these ''official results'' differ to some degree from goal performance reported by the GSEs in their Annual Housing Activities Reports to the Department.

HUD's goals specified that in 1996 at least 21 percent of the number of units eligible to count toward the Geographically Targeted Goal should qualify as geographically targeted, and at least 24 percent should qualify in 1997 and 1998. Actual performance, based on HUD analysis of GSE loan-level data, was as follows:

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[41] The Future of Manufactured Housing, Harvard University Joint Center for Housing Studies, February 1997.

[42] Though future demand for manufactured housing is promising, the Joint Center notes some continued obstacles to growth. Challenges for the industry to overcome include a lack of standardization of installation procedures and product guarantees, exclusionary zoning laws, and certain provisions of the national building code.

	1996	1997	1998
Fannie Mae:			
Units Eligible to Count Toward Goal...	1,891,896	1,765,347	3,546,302
Geographically Targeted Units.....	532,434	508,746	958,233
Percent Geographically Targeted.....	28.1%	28.8%	27.0%
Freddie Mac:			
Units Eligible to Count Toward Goal...	1,325,900	1,180,517	2,658,556
Geographically Targeted Units.....	331,495	310,572	693,748
Percent Geographically Targeted.....	25.0%	26.3%	26.1%

Thus, Fannie Mae surpassed the goals by 7.1 percentage points and 4.8 percentage points in 1996 and 1997, respectively, and Freddie Mac surpassed the goals by 4.0 and 2.3 percentage points. In 1998 Fannie Mae's performance fell by 1.8 percentage points, while Freddie Mac's performance fell slightly, by 0.2 percentage point.[43]

Fannie Mae's performance on the Geographically Targeted Goal jumped sharply in just two years, from 23.6 percent in 1993 to 31.9 percent in 1995, before tailing off to 28.1 percent in 1996. As indicated, it then rose slightly to 28.8 percent in 1997, before tailing off to 27.0 percent last year. Freddie Mac has shown more steady gains in performance on the Geographically Targeted Goal, from 21.3 percent in 1993 to 24.2 percent in 1994, 25 percent in 1995–96, and just over 26 percent last year.

Fannie Mae's performance on the Geographically Targeted Goal has surpassed Freddie Mac's in every year. However, Freddie Mac's 1998 performance represented a 23 percent increase over the 1993 level, exceeding the 14percent increase for Fannie Mae. And Freddie Mac's performance was 97 percent of Fannie Mae's geographically targeted share in 1998, the highest ratio since the interim goals took effect in 1993.

2. GSEs' Mortgage Purchases in Metropolitan Neighborhoods

As shown in Table B.5, metropolitan areas accounted for about 85 percent of total GSE purchases under the Geographically Targeted Goal. This section uses HMDA and GSE data for metropolitan areas to examine the neighborhood characteristics of the GSEs' mortgage purchases. In subsection 2.a, the GSEs' performance in underserved neighborhoods is compared with that of portfolio lenders and the overall market. This section therefore expands on the discussion in Appendix A, which compared the GSEs' funding of affordable loans with the overall conventional conforming market. In subsection 2.b., the characteristics of the GSEs' purchases within underserved areas are compared with those for their purchases in served areas.

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[43] The Fannie Mae figures for 1997 differ from corresponding figures presented by Fannie Mae in its Annual Housing Activity Report to HUD by 0.2 percentage points, reflecting minor differences in application of counting rules. The percentages shown above for Fannie Mae in 1996 and 1998 and for Freddie Mac in 1996–1998 are identical to the corresponding percentages in the GSEs' Annual Housing Activity Reports.

Table B.5

Fannie Mae and Freddie Mac Acquisitions of Single-Family and Multifamily Units in Underserved Metro and Nonmetro Areas in 1996 and 1997

	Fannie Mae		Freddie Mac	
	1996	1997	1996	1997
Metropolitan				
Number of Underserved Units	458,925	435,900	266,677	255,729
Percent of Total Units	27.2%	27.8%	23.4%	25.3%
Total	1,686,975	1,570,117	1,138,243	1,012,584
Nonmetropolitan				
Number of Underserved Units	73,509	72,846	64,818	54,842
Percent of Total Units	36.6%	38.2%	34.6%	32.7%
Total	200,961	190,461	187,560	167,932
Overall				
Number of Underserved Units	532,434	508,746	331,495	310,571
Percent of Total Units	28.1%	28.8%	25.0%	26.3%
Total Eligible*	1,891,896	1,765,346	1,325,899	1,180,516

* Overall totals may exceed the metro/nonmetro sum due to units in unidentified census tracts.

Comparisons With the Primary Market

Overview and Main Conclusions. Tables A.3 and A.4a in Appendix A provided information on the GSEs' funding of home purchase loans for properties located in underserved neighborhoods for the years 1993 to 1998. The findings with respect to the GSEs' funding of underserved neighborhoods are similar to those reported in Appendix A regarding the GSEs' overall affordable lending performance. Both GSEs have improved their performance over the past six years but, on average, they continue to lag the conventional conforming market in providing affordable loans to underserved neighborhoods. As discussed in Appendix A, the two GSEs show very different patterns of lending—Freddie Mac has been much less likely than Fannie Mae to fund home loans in underserved neighborhoods. The percentage of Freddie Mac's purchases financing properties in underserved census tracts is substantially less than the percentage of total market originations in these tracts; furthermore, since 1992 Freddie Mac has not made any progress closing the gap with the primary market. Fannie Mae, on the other hand, is much closer to market levels in its funding of underserved areas. The same issue discussed in Appendix A about the down payment characteristics of the GSEs' purchases can also be raised about their purchases in underserved areas—the GSEs' typically purchase high down payment mortgages in these areas, which reduces their ability to help lower-income, cash-constrained borrowers seeking to purchase properties in these neighborhoods. The remainder of this section present data to support these conclusions.

Freddie Mac. During the 1993–1998 period, Freddie Mac has lagged Fannie Mae, portfolio lenders, and the overall conforming market in providing home loans to underserved neighborhoods. Underserved census tracts (as defined by HUD) accounted for 19.7 percent of Freddie Mac's single-family home mortgages, compared with 22.9 percent of Fannie Mae's purchases, 26.3 percent of loans originated and held in portfolio by depository lenders, and 24.5 percent of the overall conforming primary market. If the analysis is restricted to the 1996–98 period during which the current housing goals have been in effect, the data continue to show that Freddie Mac has lagged the market in funding underserved neighborhoods (see Table A.3 in Appendix A). In 1998, underserved census tracts accounted for 20.0 percent of Freddie Mac's purchases and 24.6 percent of loans originated in the conforming home purchase market, yielding a ''Freddie Mac-to-market'' ratio of only 0.81 (i.e. 20.0 divided by 24.6).

Fannie Mae. Over the longer 1993–98 period and the more

recent 1996–98 period, Fannie Mae has lagged the market and portfolio lenders in funding properties in underserved areas, but to a much smaller degree than Freddie Mac. During the 1996–98 period, underserved tracts accounted for 22.9 percent of Fannie Mae's purchases, compared with 25.8 percent of loans retained in portfolio by depositories and with 24.9 percent of home loans originated in the conventional conforming market. Fannie Mae's performance is much closer to the market than Freddie Mac's performance, as can be seen by the ''Fannie Mae-to-market'' ratio of 0.92 for the 1996–98 period (*i.e.* 22.9 divided by 24.9).

Fannie Mae's performance improved during 1997, due mainly to Fannie Mae's increased purchases during 1997 of prior-year mortgages in underserved neighborhoods. Overall, Fannie Mae's purchases of home loans in underserved areas increased from 22.3 percent in 1996 to 23.5 percent in 1997. The underserved area percentage for Fannie Mae's purchases of newly-originated mortgages was actually lower in 1997 (20.8 percent) than in 1996 (21.9 percent). This decline was offset by the fact that a particularly high percentage (30.1 percent) of Fannie Mae's 1997 purchases of prior-year mortgages was for properties in underserved areas. Thus, Fannie Mae improved its overall performance in 1997 by supplementing its purchases of newly-originated mortgages with purchases of prior-year mortgages targeted to underserved neighborhoods. As shown in Table A.4a in Appendix A, Fannie Mae continued this strategy in 1998.

The annual data in Table A.4a show the progress that Fannie Mae has made closing the gap between its performance and that of the overall market. In 1992, underserved areas accounted for 18.3 percent of Fannie Mae's purchases and 22.2 percent of market originations, for a ''Fannie Mae-to-market'' ratio of 0.82. By 1998, underserved areas accounted for 22.9 percent of Fannie Mae's purchases and 24.6 percent of market originations, for a higher ''Fannie Mae-to-market'' ratio of 0.93. Freddie Mac, on the other hand, fell further behind the market during this period. In 1992, Freddie Mac had a slightly higher underserved area percentage (18.6 percent) than Fannie Mae (18.3 percent). However, Freddie Mac's underserved area percentage had only increased to 20.0 percent by 1998 (versus 22.9 percent for Fannie Mae). Thus, the ''Freddie Mac-to-market'' ratio fell from 0.84 in 1992 to 0.81 in 1998.

Down Payment Characteristics. Table B.6 reports the down payment and borrower income characteristics of mortgages that the GSEs purchased in underserved areas during 1997. Two points stand out. First, loans on properties in underserved areas were more likely to have a high loan-to-value ratio than loans on properties in served areas. Specifically, about 18 percent of loans in undeserved areas had a down payment less than ten percent, compared with 15 percent of all loans purchased by the GSEs. Second, loans to low-income borrowers in underserved areas were typically high down payment loans. Approximately 70 percent of the GSE-purchased loans to very low-income borrowers living in underserved areas had a down payment more than 20 percent.

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Table B.6

Down Payment Characteristics of GSE Purchases in Underserved Areas, 1997

	Size of Down Payment				
GSE Purchases	Less Than 5 Percent Down	5 to 10 Percent Down	10 to 20 Percent Down	20 Percent or More Down	Total [1]
All Loans	36,703	328,467	365,981	1,638,798	2,369,949
Loans in Underserved Areas	16,265	87,092	91,537	374,087	568,981
Very- Low-Income Loans	4,764	10,463	9,282	57,762	82,271
Less- Than-Median Income Loans	13,617	38,995	37,831	173,687	264,130
Percentage Distribution					
All Loans	1.5%	13.9%	15.4%	69.1%	100.0%
Loans in Underserved Areas	2.9%	15.3%	16.1%	65.7%	100.0%
Very- Low-Income Loans	5.8%	12.7%	11.3%	70.2%	100.0%
Less- Than-Median Income Loans	5.2%	14.8%	14.3%	65.8%	100.0%

Source: National File A of the GSE Public Use Data Base. Data include all owner-occupied one-unit mortgages (home purchase, refinance, and second loans) purchased by the GSEs in underserved areas (both metropolitan and non-metropolitan) in 1997.

[1] Loans with missing down payments are excluded.

Table B.7

Loan and Borrower Characteristics of Single-Family Mortgages Purchased by the GSEs In Metropolitan Areas, 1997

Loan and Borrower Characteristics	Fannie Mae		Freddie Mac		Total	
	Served	Underserved	Served	Underserved	Served	Underserved
Number of Loans	944,391	276,434	667,269	174,981	1,611,660	451,415
Loan Purpose						
Home Purchase	63.7 %	62.9 %	60.8 %	54.6 %	63.2 %	61.3 %
Refinancing	36.3	37.1	39.2	45.4	36.8	38.7
Seasoning						
Seasoned	13.7 %	20.9 %	6.2 %	7.4 %	10.6 %	19.2 %
Not Seasoned	86.3	70.1	93.8	92.6	89.4	80.8
Loan-to-Value Ratio						
Over 95%	1.6 %	4.9 %	0.4 %	1.1 %	1.1 %	3.4 %
91-95%	13.2	15.9	14.4	17.2	13.7	16.4
81-90%	15.8	16.4	14.9	15.2	15.4	16.0
61-80%	50.0	47.0	52.1	51.7	50.9	48.8
60% or Less	19.4	15.8	18.3	14.8	18.9	15.4
Income of Borrower(s)						
60% of Area Median or Below	7.3 %	18.2 %	6.6 %	15.8 %	7.0 %	17.2 %
61-100% of Median	25.9	36.2	25.6	35.3	25.8	35.8
Below Area Median	33.2	54.4	32.2	51.0	32.8	53.1
Over 100% of Median	66.8	45.6	67.8	49.0	67.2	46.9
First-time Home Buyer	18.1 %	23.2 %	15.5 %	18.3 %	17.0 %	21.3 %
Race/National Origin of Borrower						
White	88.7 %	68.5 %	90.8 %	74.3 %	89.6 %	70.8 %
African American	2.4	9.3	2.1	7.1	2.3	8.4
Hispanic	3.5	13.1	2.8	11.4	3.2	12.4
Asian or Pacific Islander	3.7	7.2	2.9	5.6	3.4	6.6
American Indian or Alaskan Native	0.4	0.4	0.3	0.4	0.3	0.4
Other.	1.3	1.5	1.2	1.3	1.3	1.4
Age of Borrower						
Under 30	13.0 %	15.1 %	12.8 %	14.0 %	12.9 %	14.6 %
30-39	35.8	33.0	36.6	33.3	36.1	33.1
40 and Over	51.2	52.0	50.5	52.7	50.9	52.3
Gender of Borrower(s)						
All Male	16.7 %	22.3 %	16.2 %	21.4 %	16.5 %	21.9 %
All Female	15.9	21.3	15.5	20.1	15.7	20.8
Male and Female	67.4	56.4	68.3	58.6	67.7	57.2

Source: HUD analysis of GSEs' loan-level data on mortgages on owner-occupied one-unit properties. In computing the percentages, missing data are excluded.

b. Characteristics of GSEs' Purchases of Mortgages on Properties in Metropolitan Underserved Areas

Several characteristics of loans purchased by the GSEs in metropolitan underserved areas are presented in Table B.7. As shown, borrowers in underserved areas are more likely than borrowers in served areas to be first-time homebuyers, females, and older than 40 or younger than 30. And, as expected, they are more likely to have below-median income and to be members of minority groups. For example, first-time homebuyers make up 21 percent of the GSEs' mortgage purchases in underserved areas and 17 percent of their business in served areas. In underserved areas, 53 percent of borrowers have incomes below the area median, compared with 33 percent of borrowers in served areas.

Minorities' share of the GSEs' mortgage purchases in underserved areas (29.2 percent) was nearly three times their share in served areas (10.5 percent). And the pattern was even more pronounced for African Americans and Hispanics, who accounted for 20.8 percent of the GSEs' business in underserved areas, but only 5.5 percent of their purchases in served areas.

Other differences between the GSEs' purchases in underserved and served areas include the fact that prior-year mortgages comprised a higher percentage of Fannie Mae's loans in underserved areas (32.8 percent) than in served areas (25.3 percent) in 1997, which suggests that Fannie Mae may be purchasing prior-year loans in underserved areas to raise its performance on the Geographically Targeted Goal. Also, refinance mortgages comprised a higher percentage of Freddie Mac's loans in underserved areas (44.6 percent) than in served areas (38.8 percent) in 1997, possibly due to the fact that refinance mortgages, which typically have lower loan-to-value ratios than home purchase mortgages, have lower probabilities of default or severity of loss.

3. GSE Mortgage Purchases in Nonmetropolitan Areas

Nonmetropolitan mortgage purchases made up 14 percent of the GSEs' total mortgage purchases in 1997. Mortgages in underserved counties made up 38 percent of the GSEs' business in rural areas. [44]

Unlike the underserved definition for metropolitan areas which was based on census tracts, the rural underserved definition was based on counties. Rural lenders argued that they identified mortgages by the counties in which they were located rather than the census tracts; and therefore, census tracts were not an operational concept in rural areas. Market data on trends in mortgage lending for metropolitan areas is provided by the Home Mortgage Disclosure Act (HMDA); however, no comparable data source exists for rural mortgage markets. The absence of rural market data is a constraint for evaluating credit gaps in rural mortgage lending and for defining underserved areas.

The broad nature of the underserved definition for nonmetropolitan areas raises at least two concerns. The first concern is whether the broad definition overlooks differences in borrower characteristics in served and underserved counties that should be included in the definition. Table B.8 compares borrower and loan characteristics for the GSEs' mortgage purchases in served and underserved areas. The GSEs are less likely to purchase loans for first-time homebuyers and more likely to purchases mortgages for high-income borrowers in underserved than in served counties. Mortgages to first-time homebuyers account for 13.9 percent of the GSEs' mortgage purchases in served counties compared with 12.3 percent in underserved counties. Surprisingly, borrowers in served counties are more likely to have incomes below the median than in underserved counties (34.5 percent compared to 28.8 percent). These findings support the claim that, in rural underserved counties, the GSEs purchase mortgages for borrowers that probably encounter few obstacles to obtaining mortgage credit.

[44] Underserved areas make up about 56 percent of the census tracts in nonmetropolitan areas and 47 percent of the census tracts in metropolitan areas. This is one reason why underserved areas comprise a larger portion of the GSEs' single-family mortgages in nonmetropolitan areas (38 percent) than in metropolitan areas (22 percent).

Table B.8

Loan and Borrower Characteristics of Single-Family Mortgages Purchased by the GSEs In Non-Metropolitan Counties, 1997

Loan and Borrower Characteristics	Fannie Mae		Freddie Mac		Total	
	Served	Underserved	Served	Underserved	Served	Underserved
Number of Loans	108,236	69,275	94,810	52,578	203,046	121,853
Loan Purpose						
Home Purchase	57.5 %	58.3 %	50.3 %	48.3 %	54.2 %	54.1
Refinancing	425.0	41.7	49.7	51.7	45.8	45.9
Seasoning						
Seasoned	25.9 %	30.9 %	16.3 %	16.2 %	21.5 %	24.8
Not Seasoned	74.1	69.1	83.7	83.8	78.5	75.2
Loan-to-Value Ratio						
Over 95%	1.6 %	1.1 %	0.3 %	0.2 %	1.0 %	0.7
91-95%	12.6	13.6	12.7	13.9	12.7	13.7
81-90%	13.7	15.0	12.7	13.1	13.2	14.1
61-80%	51.5	50.4	54.5	54.2	52.9	52.1
60% or Less	20.6	20.0	19.8	18.6	20.2	19.4
Income of Borrower(s)						
60% of Area Median or Below	7.8 %	6.6 %	7.2 %	6.1 %	7.5 %	6.4
61-100% of Median	27.2	22.3	26.7	22.7	27.0	22.5
Below Area Median	35.0	28.9	33.9	28.7	34.5	28.8
Over 100% of Median	65.0	71.1	66.1	71.3	65.5	71.2
First-time Home Buyer	15.2 %	13.0 %	12.4 %	11.4 %	13.9 %	12.3
Race/National Origin of Borrower						
White	95.8 %	90.2 %	96.6 %	93.4 %	96.2 %	91.6
African American	1.1	3.5	0.8	2.0	1.0	2.8
Hispanic	1.3	3.4	1.1	2.4	1.2	2.9
Asian or Pacific Islander	0.6	1.3	0.6	1.0	0.6	1.2
American Indian or Alaskan Native	0.4	0.7	0.3	0.6	0.3	0.6
Other	0.8	1.0	0.6	0.7	0.7	0.8
Age of Borrower						
Under 30	14.5	13.8	14.2	13.7	14.4	13.7
30-39	33.9	32.3	34.1	31.9	34.0	32.1
40 and Over	51.6	53.9	51.7	54.4	51.6	54.2
Gender of Borrower(s)						
All Male	15.7	15.6	15.0	14.9	15.4	15.3
All Female	12.4	12.5	11.9	12.0	12.2	12.3
Male and Female	71.9	71.8	73.1	73.2	72.4	72.4

Source: HUD analysis of GSEs' loan-level data on mortgages on owner-occupied one-unit properties. In computing the percentages, missing data are excluded.

The second concern is whether defining underserved areas in terms of an entire county gives the GSEs an incentive to purchase mortgages in the ''better off'' tracts. Based on an analysis of the GSEs' mortgage purchases by tract median income, it is unclear if the broad nature of the county definition has an impact on the GSEs' purchasing behavior at the tract level. For example, even though the GSEs purchase a larger percentage of mortgages in high-minority and low-income tracts in underserved than in served counties, they purchase nearly the same percentage of mortgages in both underserved and served counties in high-income tracts.

In underserved areas, the GSEs are more likely to purchase mortgages in low-income and high-minority census tracts than in served counties. The GSEs are more than twice as likely to purchase mortgages in tracts with median incomes at or below 80 percent of AMI in underserved counties than in served counties (15.7 percent vs. 5.1 percent). For census tracts with percent minority above 30 percent, 3.3 percent of the GSEs' purchases in served counties are in these high-minority tracts compared to 23.9 percent in underserved counties. These results are expected since underserved counties are made up of a greater number of low-income and high-minority census tracts than are served counties.

While the GSEs purchase nearly the same percentages of mortgages in the ''better off'' tracts in underserved counties and served counties, when compared to the percentage of owner-occupied units in these areas, two points stand out. First, as the ratio of tract income to area median income increases, so does the volume of GSE home mortgage purchases relative to the number of owner-occupied units in the tract. Second, this tendency is more pronounced in underserved than in served counties.

Tables B.9 and B.10 provide distributions of owner-occupied units across tracts by tract income ratio, as reported in the 1990 Census, and distributions of 1997 GSE home mortgage purchases by tract income ratio. The two tables provide data for underserved and for served counties, respectively. In underserved counties, 1.1 percent of GSE 1997 purchases and 2.7 percent of owner-occupied units were in tracts with median income at or below 60 percent of area median income. The ratio of these two shares is 0.41 (1.1 divided by 2.7). As the ratio of tract income to area median income increases, the ratio between the two shares increases (see Table B.9). This same result is found for served counties, but the ratios are both larger for low tract income ratios and smaller for high tract income ratios (Compare Table B.10 with Table B.9).

Table B.9

Distributions of GSE Purchases and Housing Units By Tract Income Ratio For Non-Metropolitan Underserved Counties

Tract Income Ratio[1]	1997 Distribution of GSE Home Mortgage Purchases	1990 Distribution of All Owner-Occupied Units	Ratio of Shares
0 ≤ 60%	1.1 %	2.7 %	0.41
60 ≤ 80%	14.6	18.4	0.79
80 ≤ 95%	35.6	39.0	0.91
95 ≤ 100%	12.0	12.6	0.95
100 ≤ 120%	24.5	21.2	1.16
> 120%	12.2	6.0	2.03
Total	100.0 %	100.0 %	

[1] Tract median income relative to area median income (i.e., the median income for the county or the nonmetropolitan portion of the State, whichever is greater.)

Table B.10

Distributions of GSE Purchases and Housing Units By Tract Income Ratio For Non-Metropolitan Served Counties

Tract Income Ratio[1]	1997 Distribution of GSE Home Mortgage Purchases	1990 Distribution of All Owner-Occupied Units	Ratio of Shares
0 ≤ 60%	0.4 %	0.6 %	0.67
60 ≤ 80%	4.7	6.0	0.78
80 ≤ 95%	22.4	26.4	0.85
95 ≤ 100%	14.4	15.8	0.91
100 ≤ 120%	43.6	41.4	1.05
> 120%	14.5	9.8	1.48
Total	100.0 %	100.0 %	

[1] Tract median income relative to area median income (i.e., the median income for the county or the nonmetropolitan portion of the State, whichever is greater.)

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The fact that the ratio of shares for higher-income tracts is larger in underserved counties than in served counties suggests that the GSEs are purchasing a greater percentage of mortgages in ''better off'' tracts as a result of the county-based geographically targeted goal. For example, in tracts where the median income is above 120 percent of the area median, the ratio of the GSEs' mortgage purchase share to the owner-occupied units share is 2.03 for underserved counties, compared to 1.48 for served counties. Conversely, in tracts where the median income is at or below 60 percent of the area median, the ratio of the GSEs' mortgage purchase share to the owner-occupied units share is 0.41, compared to 0.67 for served counties.

There are similarities and differences between the types of loans that Fannie Mae and Freddie Mac purchase in served and underserved counties. The GSEs are similar in that their mortgage purchases in underserved counties do not have lower downpayments than in served counties. In both served and underserved counties, approximately 28 percent of the GSEs' 1997 mortgage purchases have loan-to-value ratios above 80 percent. The GSEs differ in their mortgage purchases of refinanced and seasoned loans. Fannie Mae is more likely to purchase more seasoned mortgages in underserved than in served counties; Freddie Mac is more likely to purchase more refinanced mortgages in underserved than in served counties.

E. Factor 4: Size of the Conventional Conforming Mortgage Market for Underserved Areas

HUD estimates that underserved areas account for 29–32 percent of the conventional conforming mortgage market. The analysis underlying this estimate is detailed in Appendix D.

F. Factor 5: Ability to Lead the Industry

This factor is the same as the fifth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see Section G of Appendix A for a discussion of this factor.

G. Factor 6: Need to Maintain the Sound Financial Condition of the Enterprises.

HUD has undertaken a separate, detailed economic analysis of this proposed rule, which includes consideration of (a) the financial returns that the GSEs earn on loans in underserved areas and (b) the financial safety and soundness implications of the housing goals. Based on this economic analysis and discussions with the Office of Federal Housing Enterprise Oversight, HUD concludes that the proposed goals raise minimal, if any, safety and soundness concerns.

H. Determination of the Geographically-Targeted Areas Housing Goals

The annual goal for each GSE's purchases of mortgages financing housing for properties located in geographically-targeted areas (central cities, rural areas, and other underserved areas) is established at 29 percent of eligible units financed in calendar year 2000 and 31 percent of eligible units financed in calendar year 2001. The year 2001 goal will remain in effect through 2003 and thereafter, unless changed by the Secretary prior to that time. The goal represents an increase over the 1996 goal of 21 percent and the 1997–99 goal of 24 percent. However, it is commensurate with the market share estimates of 29–32 percent, presented in Appendix D.

This section summarizes the Secretary's consideration of the six statutory factors that led to the choice of these goals. It discusses the Secretary's rationale for defining these geographically-targeted areas and it compares the characteristics of such areas and untargeted areas. The section draws heavily from earlier sections which have reported findings from HUD's analyses of mortgage credit needs as well as findings from other research studies investigating access to mortgage credit.

1. Credit Needs in Metropolitan Areas

HUD's analysis of HMDA data shows that mortgage credit flows in metropolitan areas are substantially lower in high-minority and low-income neighborhoods and mortgage denial rates are much higher for residents of such neighborhoods. The economics literature discusses the underlying causes of these disparities in access to mortgage credit, particularly as related to the roles of discrimination, ''redlining'' of specific neighborhoods, and the barriers posed by underwriting guidelines to potential minority and low-income borrowers. Studies reviewed in Section B of this Appendix found that the racial and income composition of neighborhoods influence mortgage access even after accounting for demand and risk factors that may influence borrowers' decisions to apply for loans and lenders' decisions to make those loans. Therefore, the Secretary concludes that high-minority and low-income neighborhoods in metropolitan areas are underserved by the mortgage system.

2. Identifying Underserved Portions of Metropolitan Areas

To identify areas underserved by the mortgage market, HUD focused on two traditional measures used in a number of studies based on HMDA data:[45] application denial rates and mortgage origination rates per 100 owner-occupied units.[46] Tables B.1 and B.2 in Section B of this Appendix presented detailed data on denial and origination rates by the racial composition and median income of census tracts for metropolitan areas.[47] Aggregating this data is useful in order to examine denial and origination rates for broader groupings of census tracts:

Minority composition	Denial rate (percent)	Orig. rate	Tract income	Denial rate (percent)	Orig. rate
0 – 30%	13.7	8.7	Less than 90%	24.0%	6.5
30 – 50%	21.3%	6.8	90–120%	15.6	8.3
50 – 100%	25.1%	5.8	Greater than 20%	9.5	9.5

Two points stand out from these data. First, high-minority census tracts have higher denial rates and lower origination rates than low-minority tracts. Specifically, tracts that are over 50 percent minority have nearly twice the denial rate and two-thirds the origination rate of tracts that are under 30 percent minority.[48] Second, census tracts with lower incomes have higher denial rates and lower origination rates than higher income tracts. Tracts with income less than or equal to 90 percent of area median income have 2.5 times the denial rate and barely two-thirds the origination rate for tracts with income over 120 percent of area median income.

In 1995, HUD's research determined that ''underserved areas'' could best be characterized in metropolitan areas as census tracts with minority population of at least 30 percent in 1990 and/or census tract median income no greater than 90 percent of area median income in 1990, excluding high-minority high-income tracts. These cutoffs produce sharp differentials in denial and origination rates between underserved areas and adequately served areas. For example, the mortgage denial rate in underserved areas (23.4 percent) was nearly twice that in

[45] HMDA provides little useful information on rural areas. Therefore, the HMDA data reported here apply only to metropolitan areas.

[46] Analysis of application rates are not reported here. Although application rates are sometimes used as a measure of mortgage demand, they provide no additional information beyond that provided by looking at both denial and origination rates. The patterns observed for application rates are still very similar to those observed for origination rates.

[47] As shown in Table B.1, no sharp breaks occur in the denial and origination rates across the minority and income deciles—mostly, the increments are somewhat similar as one moves across the various deciles that account for the major portions of mortgage activity.

[48] The differentials in denial rates are due, in part, to differing risk characteristics of the prospective borrowers in different areas. However, use of denial rates is supported by the findings in the Boston Fed study which found that denial rate differentials persist, even after controlling for risk of the borrower. See Section B for a review of that study.

adequately served areas (12.2 percent) in 1997.

These minority population and income thresholds apply in the suburbs as well as in OMB-defined central cities. HUD's research has found that the average denial rate in underserved suburban areas is almost twice that in adequately served areas in the suburbs. (See Figure B.1 in Section B of this Appendix.) Thus HUD uses the same definition of underserved areas throughout metropolitan areas—there is no need to define such areas differently in central cities and in the suburbs. And HUD's definition, which covers 57 percent of the central city population and 33 percent of the suburban population, is clearly preferable to a definition which would count 100 percent of central city residents and zero percent of suburban residents as living in underserved areas.

This definition of metropolitan underserved areas includes 21,586 of the 46,904 census tracts in metropolitan areas, covering 44 percent of the metropolitan population. It includes 73 percent of the population living in poverty in metropolitan areas. The unemployment rate in underserved areas is more than twice that in served areas, and rental units comprise 52.4 percent of total units in underserved tracts, versus 28.6 percent of total units in served tracts. As shown in Table B.11, this definition covers most of the population in the nation's most distressed central cities: Newark (99 percent), Detroit (96 percent), Hartford (97 percent), and Cleveland (90 percent). The nation's five largest cities also contain large concentrations of their population in underserved areas: New York (62 percent), Los Angeles (69 percent), Chicago (77 percent), Houston (67 percent), and Philadelphia (80 percent).

Table B.11

Needy Areas in Central Cities Would be Covered

Large Cities with High Concentrations of Tracts Included in the Geographically Targeted Goal (Percent of Population)

Newark	99%
Hartford	97%
Gary	96%
Detroit	96%
Jersey City	92%
Miami	91%
Baltimore	90%
Cleveland	90%
St. Louis	85%

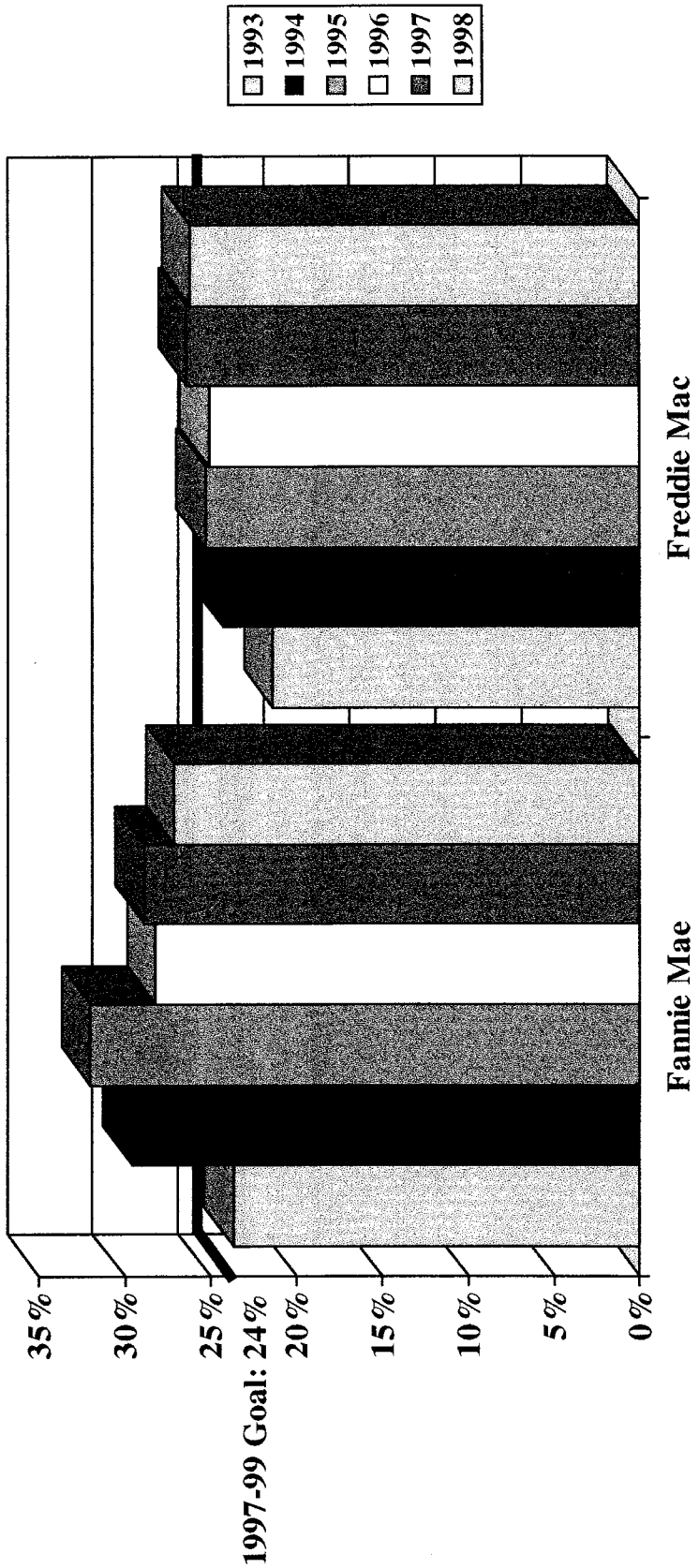
Five Largest Cities

New York	62%
Los Angeles	69%
Chicago	77%
Houston	67%
Philadelphia	80%

Central Cities with Small Concentrations

Large Cities		Small Cities	
Raleigh	33%	Appleton, WI	6%
Tulsa	38%	Cedar Falls, IA	8%
Nashville-Davidson	41%	Scottsdale, AZ	11%
Oklahoma City	42%	Naples, FL	13%
Wichita	43%	Orem, UT	14%
Colorado Springs	44%	Wheeling, WV	20%
Columbus	46%	Salem, OR	19%
Phoenix	51%	Elkhart, IN	20%

Figure B.2
Geographically Targeted Mortgage Purchases

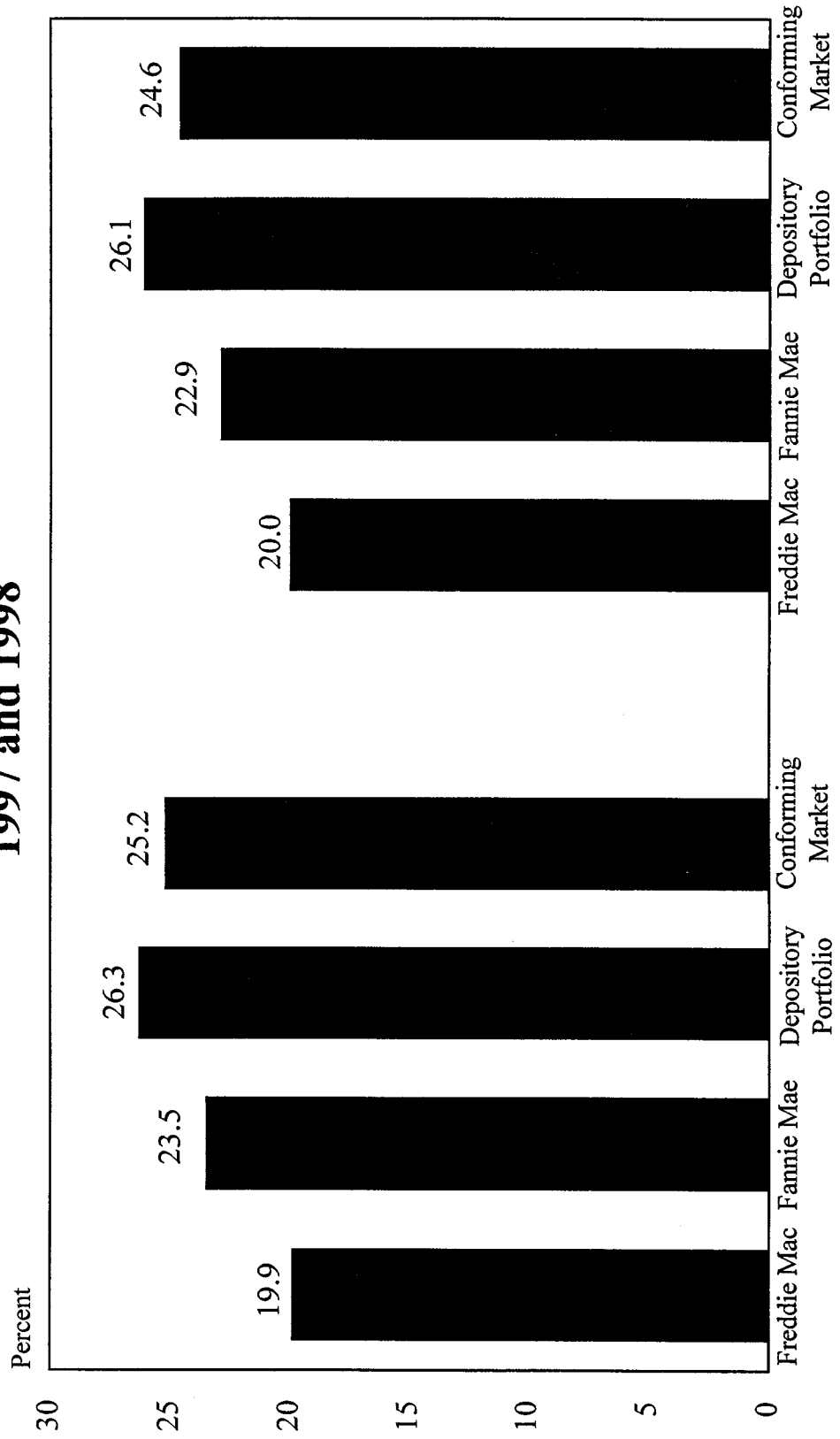


Geographically Targeted Goal is 24% of units financed for 1997-99 (21% for 1996).

Source: HUD analysis of GSEs' loan-level data.

Figure B.3

The Share Of GSE And Conventional Conforming Mortgages in Census Tracts Included in the Geographically Targeted Goal, 1997 and 1998



Source: Conforming market and depository data are from 1997 and 1998 HMDA; GSE data are from loan-level data reported to HUD. Data are for single-family home purchase loans in metropolitan areas. See Table A.4a for further explanation.

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Identifying Underserved Portions of Nonmetropolitan Areas

Recognizing the difficulty of defining rural underserved areas and the need to encourage GSE activity in such areas, HUD has chosen a rather broad, county-based definition of underservedness in rural areas. Specifically, a nonmetropolitan county is underserved if in 1990 (1) county median family income was less than or equal to 95 percent of the greater of state or national nonmetropolitan income or (2) county median family income was less than or equal to 120 percent of state nonmetropolitan income and county minority population was at least 30 percent of total county population. This definition includes 1,511 of the 2,305 counties in nonmetropolitan areas and covers 54 percent of the nonmetropolitan population. The definition does target the most disadvantaged rural counties—it includes in underserved areas 67 percent of the nonmetropolitan poor and 75 percent of nonmetropolitan minorities. The average poverty rate in underserved counties in 1990 was 21 percent, significantly greater than the 12 percent poverty rate in counties designated as adequately served. The definition also includes 84 percent of the population that resides in remote counties that are not adjacent to metropolitan areas and have fewer than 2,500 residents in towns.

4. Past Performance of the GSEs

The GSEs' performance on the geographically-targeted goal has improved significantly in recent years, as shown in Figure B.2. Fannie Mae's performance, as measured by HUD, increased sharply from 23.6 percent in 1993 to 31.9 percent in 1995, dropped to 28.1 percent in 1996, and rose to 28.8 percent in 1997, and then dropped to 27.0 percent in 1998. Freddie Mac's performance, as measured by HUD, rose from 21.8 percent in 1993 to 26.4 percent in 1995, followed by 25.0 percent in 1996, 26.3 percent in 1997, and 26.1 percent in 1998.

Both GSEs have improved their performance in underserved areas over the past six years but, on average, they continue to lag the conforming primary market in providing single-family home loans to distressed neighborhoods. As discussed in Section D, the GSEs show different patterns of lending—Freddie Mac is less likely than Fannie Mae to purchase mortgages on properties in low-income and high-minority neighborhoods. During the 1996–98 period, Freddie Mac lagged Fannie Mae, portfolio lenders, and the overall conforming market in providing funds to underserved neighborhoods. As shown in Figure B.3, underserved areas accounted for 20.0 percent of Freddie Mac's 1998 purchases of home loans, compared with 22.9 percent of Fannie Mae's purchases, 26.1 percent of home loans retained in depositories' portfolios, and 24.6 percent of the overall conforming market. Freddie Mac has not made any progress since 1992 in reducing the gap between its performance and that of the conventional conforming home purchase market. Fannie Mae, on the other hand, has improved its funding in underserved areas and has closed the gap between its performance and the single-family primary market in funding low-income and high-minority neighborhoods.[49]

HUD also conducted an analysis of the share of the overall (single-family and multifamily) conventional conforming mortgage market accounted for by the GSEs. The GSEs' purchases represented 39 percent of total dwelling units financed during 1997 but they represented only 33 percent of the dwelling units financed in underserved neighborhoods. In other words, the GSEs account for only one-third of the single-family and multifamily units financed in underserved areas. This suggests that there is room for the GSEs to increase their purchases in underserved neighborhoods.

5. Size of the Mortgage Market for Geographically-Targeted Areas

As detailed in Appendix D, the market for mortgages in geographically-targeted areas accounts for 29 to 32 percent of dwelling units financed by conventional conforming mortgages. In estimating the size of the market, HUD used alternative assumptions about future economic and market conditions that were less favorable than those that existed over the last five years. HUD is well aware of the volatility of mortgage markets and the possible impacts on the GSEs' ability to meet the housing goals. Should conditions change such that the goals are no longer reasonable or feasible, the Secretary has the authority to revise the goals.

6. The Geographically-Targeted Areas Housing Goal for 2000–03

There are several reasons that the Secretary is increasing the Geographically Targeted Areas Goal. *First,* the present 24 percent goal level for 1997–99 and the GSEs' recent performance are below the estimated 29–32 percent of the primary mortgage market accounted for by units in properties located in geographically-targeted areas. Raising the goal reflects the Secretary's concern that the GSEs close the remaining gap between their performance and that of the primary mortgage market.

Second, the single-family-owner mortgage market in underserved areas has demonstrated remarkable strength over the past few years relative to the preceding period. This market had only recently begun to grow in 1993 and 1994, the latest period for which data was available when the 1996–99 goals were established in December 1995. But the historically high undeserved areas share of the primary single-family mortgage market attained in 1994 has been maintained over the 1995–98 period. The three-year average of the underserved areas share of the single-family-owner mortgage market in metropolitan areas was 22.2 percent for 1992–94, but 25.1 percent for 1995–98 and 24.1 percent for the 1992–98 period as a whole.

Third, as discussed in detail in Appendix A, there are several market segments that would benefit from a greater secondary market role by the GSEs; many of these market segments are concentrated in underserved areas. For example, one such area is single-family rental dwellings. These properties, containing 1–4 rental units, are an important source of housing for families in low-income and high-minority neighborhoods. However, the GSEs' purchases have accounted for only 13 percent of the single-family rental units financed in underserved areas during 1997. The Secretary believes that the GSEs can do more to play a leadership role in providing financing for such properties. Examples of other market segments in need of an enhanced GSE role include small multifamily properties, rehabilitation loans, seasoned CRA loans, and manufactured housing. Additional efforts by the GSEs in these markets would benefit families living in underserved areas.

Finally, a wide variety of quantitative and qualitative indicators indicate that the GSEs' have the financial strength to improve their affordable lending performance. For example, combined net income has risen steadily over the last decade, from $677 million in 1987 to $4.5 billion in 1997, an average annual growth rate of 21 percent per year. This financial strength provides the GSEs with the resources to lead the industry in supporting mortgage lending for properties located in geographically-targeted areas.

Summary. Figure A.4 of Appendix A summarizes many of the points made in this section regarding opportunities for Fannie Mae and Freddie Mac to improve their overall performance on the Geographically-Targeted Goal. The GSEs' purchases have provided financing for 2,893,046 dwelling units, which represented 39 percent of the 7,443,736 single-family and multifamily units that were financed in the conventional conforming market during 1997. However, in the underserved areas part of the market, the 795,981 units that were financed by GSE purchases represented only 33 percent of the 2,408,393 dwelling units that were financed in the market. Thus, there appears to ample room for the GSEs to increase their purchases in underserved areas. It is hoped that expression of concern in the current rulemaking will foster additional effort by both GSEs to increase their purchases in underserved areas.

7. Conclusions

Having considered the projected mortgage market serving geographically-targeted areas, economic, housing and demographic conditions for 2000–03, and the GSEs' recent performance in purchasing mortgages on properties in geographically-targeted areas, the Secretary has determined that the annual goal of 29 percent in calendar year 2000 and 31 percent in calendar year 2001 and the years following is feasible. Moreover, the Secretary has considered the GSEs' ability to lead the industry as well as the GSEs' financial condition. The Secretary has determined that these goal levels are necessary and appropriate.

[49] Although this goal is targeted to lower-income and high minority areas, it does not mean that GSE purchase activity in underserved areas derives totally from lower income or minority families. In 1997, above-median income households accounted for 37 percent of the mortgages that the GSEs purchased in underserved areas. This suggests that these areas are quite diverse.

Appendix C—Departmental Considerations To Establish the Special Affordable Housing Goal

A. Introduction

1. Establishment of the Goal

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) requires the Secretary to establish a special annual goal designed to adjust the purchase by each GSE of mortgages on rental and owner-occupied housing to meet the unaddressed needs of, and affordable to, low-income families in low-income areas and very-low-income families (the Special Affordable Housing Goal).

In establishing the Special Affordable Housing Goal, FHEFSSA requires the Secretary to consider:

1. Data submitted to the Secretary in connection with the Special Affordable Housing Goal for previous years;
2. The performance and efforts of the GSEs toward achieving the Special Affordable Housing Goal in previous years;
3. National housing needs of targeted families;
4. The ability of the GSEs to lead the industry in making mortgage credit available for low-income and very-low-income families; and
5. The need to maintain the sound financial condition of the enterprises.

2. The Goal

The final rule provides that the Special Affordable Housing Goal is 18 percent of the total number of dwelling units financed by each GSE's mortgage purchases in 2000, and 20 percent in 2001–2003. Of the total Special Affordable Housing Goal for each year, in 2000 each GSE must purchase multifamily mortgages in an amount at least equal to 0.9 percent of the 1998 total dollar volume of mortgages purchased by the GSE, rising to 1.0 percent in 2001–2003.[1]

Approximately 23–26 percent of the conventional conforming mortgage market in 2000 would qualify under the Special Affordable Housing Goal as defined in the proposed rule, as projected by HUD.

Units that count toward the goal: Subject to further provisions specified below, units that count toward the Special Affordable Housing Goal include units occupied by low-income owners and renters in low-income areas, and very-low-income owners and renters. Other low-income rental units in multifamily properties count toward the goal where at least 20 percent of the units in the property are affordable to families whose incomes are 50 percent of area median income or less, or where at least 40 percent of the units are affordable to families whose incomes are 60 percent of area median income or less.

B. Underlying Data

In considering the factors under FHEFSSA to establish the Special Affordable Housing Goal, HUD relied upon data gathered from the American Housing Survey through 1995, the Census Bureau's 1991 Residential Finance Survey, the 1990 Census of Population and Housing, Home Mortgage Disclosure Act (HMDA) data for 1992 through 1997, and annual loan-level data from the GSEs on their mortgage purchases through 1997. Appendix D discusses in detail how these data resources were used and how the size of the conventional conforming market for this goal was estimated.

Section C discusses the factors listed above, and Section D provides the Secretary's rationale for establishing the special affordable goal.

Consideration of the Factors

1 and 2. Data submitted to the Secretary in connection with the Special Affordable Housing Goal for previous years, and the performance and efforts of the enterprises toward achieving the Special Affordable Housing Goal in previous years.

The discussions of these two factors have been combined because they overlap to a significant degree.

a. GSE Performance Relative to the 1996–98 Goals

This section discusses each GSE's performance under the Special Affordable Housing Goal over the 1993–98 period. The data presented here are ''official results''—i.e., they are based on HUD's in-depth analysis of the loan-level data submitted annually to the Department and the counting provisions contained in HUD's regulations in 24 CFR part 81, subpart B. As explained below, in some cases these ''official results'' differ from goal performance reported to the Department by the GSEs in their Annual Housing Activities Reports.

HUD's goals specified that in 1996 at least 12 percent of the number of units eligible to count toward the Special Affordable goal should qualify as Special Affordable, and at least 14 percent annually beginning in 1997. The actual performance in 1996 through 1998, based on HUD analysis of loan-level data submitted by the GSEs, is shown in Table C.1 and Figure C.1. Fannie Mae surpassed the goal by 3.4 percentage points and 3.0 percentage points, respectively, in 1996 and 1997, while Freddie Mac surpassed the goal by 2.0 and 1.2 percentage points. In 1998, Fannie Mae surpassed the goal by 0.3 percentage points while Freddie Mac surpassed the goal by 1.9 percentage points (Table C.1).

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[1] While this proposed rule specifically proposes a dollar based subgoal, the Department is considering three alternative approaches to structuring the Special Affordable multifamily subgoal—a mortgage-based subgoal, a dollar-based subgoal, and a unit-based subgoal. These alternative approaches are described in the Preamble and in Section D of this Appendix.

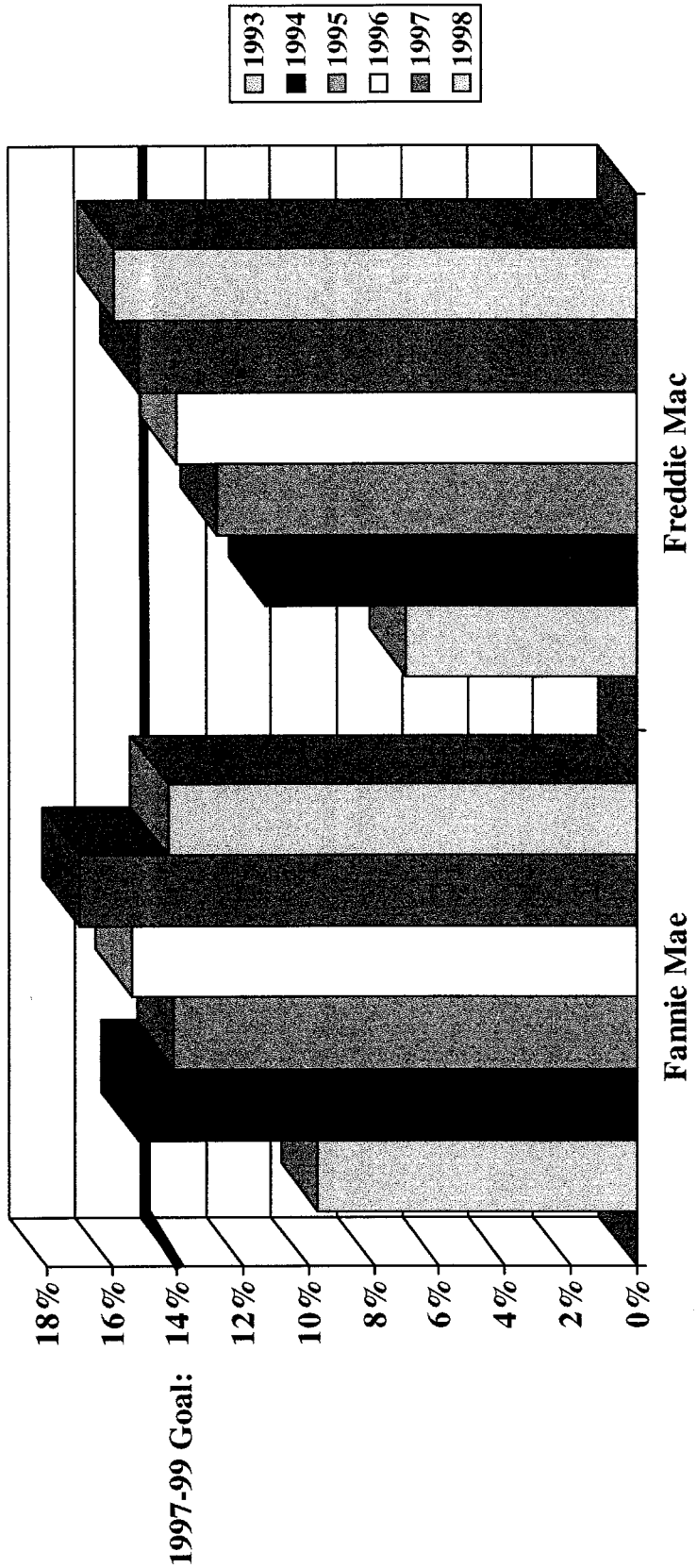
Table C.1

GSEs' Special Affordable Purchases Based on Final Rule Goal Definitions, 1993-1998

	1993	1994	1995	1996	1997	1998
Fannie Mae:						
Units Eligible to Count Toward Goal	2,909,941	1,832,257	1,417,542	1,852,233	1,748,044	3,486,040
Special Affordable Units	282,170	279,093	199,715	285,642	296,366	499,948
Percent Special Affordable	9.7%	15.2%	14.1%	15.4%	17.0%	14.3%
Special Affordable Multifamily Purchases ($billions)	$1.64	$1.74	$1.34	$2.37	$3.19	$3.53
Freddie Mac:						
Units Eligible to Count Toward Goal	2,170,036	1,290,990	959,137	1,299,589	1,175,271	2,658,174
Special Affordable Units	152,628	146,224	122,954	181,505	178,736	422,900
Percent Special Affordable	7.0%	11.3%	12.8%	14.0%	15.2%	15.9%
Special Affordable Multifamily Purchases ($billions)	$0.14	$0.46	$0.69	$1.06	$1.21	$2.69

Figure C.1

Special Affordable Mortgage Purchases



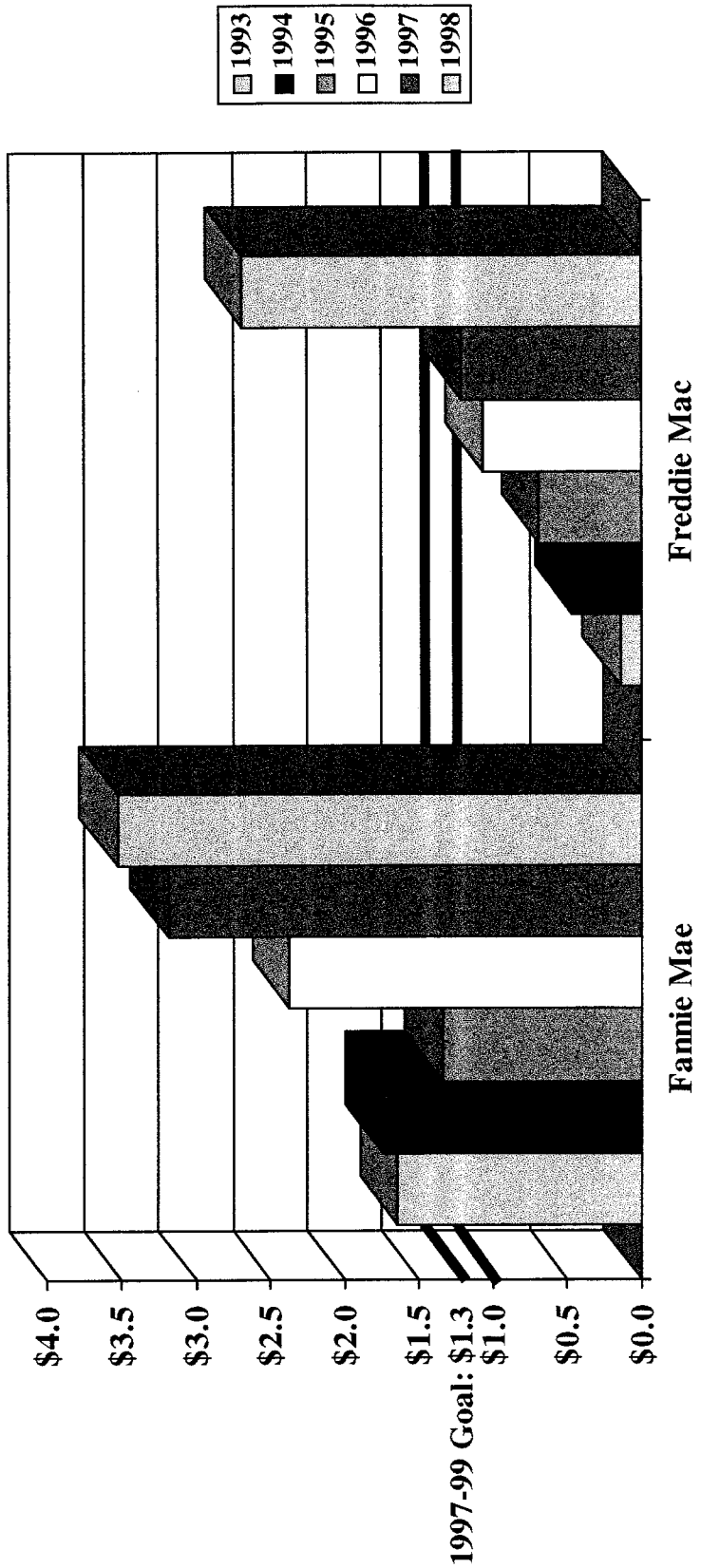
Special Affordable Goal is 14% of units financed for 1997-99 (12% for 1996).

Source: HUD analysis of GSEs' loan-level data.

Figure C.2

Multifamily Special Affordable Mortgage Purchases

(Billions of Dollars Per Year)



Multifamily Special Affordable Goals for 1996-99 are $1.29 billion per year for Fannie Mae and $988 million per year for Freddie Mac.

Source: HUD analysis of GSEs' loan-level data.

Table C.2

Fannie Mae's Special Affordable Purchases By Unit Affordability and Area Income, 1993-1997

Year of purchase and Type of unit	Very-Low Income Units in Low-Income Areas	Very-Low Income Units Outside Low-Income Areas	Other Low-Income Units in Low-Income Areas	Other Units Qualifying For Goal*	Total Units Qualifying For Goal	Percent
1993						
Single-family owner	21,731	108,354	28,351		158,436	56.1%
Single-family rental	11,474	21,022	12,082		44,578	15.8%
Multifamily	19,831	43,754	10,480	5,092	79,157	28.1%
Total	53,036	173,130	50,913	5,092	282,171	100.0%
Percent	18.8%	61.4%	18.0%	1.8%	100.0%	
1994						
Single-family owner	22,599	88,407	23,310		134,316	48.1%
Single-family rental	14,392	21,637	11,545		47,574	17.0%
Multifamily	25,712	51,173	13,572	6,746	97,203	34.8%
Total	62,703	161,217	48,427	6,746	279,093	100.0%
Percent	22.5%	57.8%	17.4%	2.4%	100.0%	
1995						
Single-family owner	20,292	68,062	18,139		106,493	53.3%
Single-family rental	8,251	11,210	5,887		25,348	12.7%
Multifamily	16,334	33,988	12,801	4,750	67,873	34.0%
Total	44,877	113,260	36,827	4,750	199,714	100.0%
Percent	22.5%	56.7%	18.4%	2.4%	100.0%	
1996						
Single-family owner	25,103	93,029	23,328		141,460	49.5%
Single-family rental	11,242	18,207	6,938		36,387	12.7%
Multifamily	23,703	59,556	15,399	9,136	107,794	37.7%
Total	60,048	170,792	45,665	9,136	285,641	100.0%
Percent	21.0%	59.8%	16.0%	3.2%	100.0%	
1997						
Single-family owner	23,909	91,400	20,825		136,134	45.9%
Single-family rental	9,169	15,290	5,399		29,858	10.1%
Multifamily	27,522	80,069	13,294	9,488	130,373	44.0%
Total	60,600	186,759	39,518	9,488	296,365	100.0%
Percent	20.4%	63.0%	13.3%	3.2%	100.0%	

* Low-income rental units in multifamily properties where at least 20 percent of the units are affordable to families whose incomes are 50 percent of area median income or less or where at least 40 percent of the units are affordable to families whose incomes are 60 percent of area median income or less, which do not otherwise qualify under the goal.

Table C.3

Freddie Mac's Special Affordable Purchases By Unit Affordability and Area Income, 1993-1997

Year of purchase and Type of unit	Very-Low Income Units in Low-Income Areas	Very-Low Income Units Outside Low-Income Areas	Other Low-Income Units in Low-Income Areas	Other Units Qualifying For Goal*	Total Units Qualifying For Goal	Percent
1993						
Single-family owner	14,689	79,181	20,935		114,805	75.2%
Single-family rental	7,426	13,612	8,365		29,403	19.3%
Multifamily	3,432	4,237	577	181	8,427	5.5%
Total	25,547	97,030	29,877	181	152,635	100.0%
Percent	16.7%	63.6%	19.6%	0.1%	100.0%	
1994						
Single-family owner	13,012	61,986	15,509		90,507	55.9%
Single-family rental	16,851	21,047	6,071		43,969	27.2%
Multifamily	12,550	11,546	2,124	1,216	27,436	16.9%
Total	42,413	94,579	23,704	1,216	161,912	100.0%
Percent	26.2%	58.4%	14.6%	0.8%	100.0%	
1995						
Single-family owner	10,801	45,782	11,138		67,721	55.1%
Single-family rental	6,018	10,705	4,697		21,420	17.4%
Multifamily	9,818	15,352	5,199	3,444	33,813	27.5%
Total	26,637	71,839	21,034	3,444	122,954	100.0%
Percent	21.7%	58.4%	17.1%	2.8%	100.0%	
1996						
Single-family owner	15,330	70,731	16,018		102,080	56.2%
Single-family rental	7,539	14,339	4,178		26,056	14.4%
Multifamily	12,634	28,301	8,760	3,675	53,370	29.4%
Total	35,503	113,371	28,956	3,675	181,506	100.0%
Percent	19.6%	62.5%	16.0%	2.0%	100.0%	
1997						
Single-family owner	15,742	66,656	15,449		97,847	54.7%
Single-family rental	7,469	11,612	5,552		24,633	13.8%
Multifamily	16,131	28,789	8,133	3,203	56,256	31.5%
Total	39,342	107,057	29,134	3,203	178,736	100.0%
Percent	22.0%	59.9%	16.3%	1.8%	100.0%	

* Low-income rental units in multifamily properties where at least 20 percent of the units are affordable to families whose incomes are 50 percent of area median income or less or where at least 40 percent of the units are affordable to families whose incomes are 60 percent of area median income or less, which do not otherwise qualify under the goal.

Table C.1 also includes, for comparison purposes, comparable figures for 1993, 1994, and 1995, calculated according to the counting conventions of the 1995 Final Rule that became applicable in 1996. Each GSEs' percentages in 1996, 1997, and 1998 exceeded their percentages in any of the three preceding years.

The Fannie Mae figures presented above are smaller than the corresponding figures presented by Fannie Mae in its Annual Housing Activity Reports to HUD by approximately 2 percentage points in both 1996 and 1997 and 1.3 percentage points in 1998. The difference largely reflects HUD-Fannie Mae differences in application of counting rules relating to counting of seasoned loans for purposes of this goal. In particular, the tabulations reflect inclusion of seasoned loan purchases in the denominator in calculating performance under the Special Affordable goal, as discussed in Preamble section II(B)(6)(c) on the Seasoned Mortgage Loan Purchases ''Recycling'' Requirement. Freddie Mac's Annual Housing Activity Report figures for this goal differ from the figures presented above by 0.1 percentage point, reflecting minor differences in application of counting rules.

Since 1996 each GSE has been subject to an annual subgoal for multifamily Special Affordable mortgage purchases, established as 0.8 percent of the dollar volume of single-family and multifamily mortgages purchased by the respective GSE in 1994. Fannie Mae's subgoal was $1.29 billion and Freddie Mac's subgoal was $988 million for each year. Fannie Mae surpassed the subgoal by $1.08 billion, $1.90 billion, and $2.24 billion in 1996, 1997, and 1998, respectively, while Freddie Mac surpassed the subgoal by $18 million, $220 million, and $1.70 billion. Table C.1 includes these figures, and they are depicted graphically in Figure C.2.

b. Characteristics of Special Affordable Purchases

The following analysis presents information on the composition of the GSEs' Special Affordable purchases according to area income, unit affordability, tenure of unit and property type (single- or multifamily).

Increased reliance on multifamily housing to meet goal. Tables C.2 and C.3 show that both GSEs have increasingly relied on multifamily housing units to meet the special affordable goal since 1993. Fannie Mae's multifamily purchases represented 44 percent of all purchases qualifying for the goal in 1997, compared with 28.1 percent in 1993. Freddie Mac's multifamily purchases represented 31.5 percent of all purchases qualifying for the goal in 1997, compared to 5.5 percent in 1993. The trends for both GSEs were steadily upward throughout the five-year period.

The other two housing categories—single-family owner and single-family rental—both exhibited downward trends for both GSEs. In 1997 Fannie Mae's single-family owner units qualifying for the goal represented 45.9 percent of all qualifying units, and Fannie Mae's single-family rental units were 10.0 percent of all qualifying units. Freddie Mac's single-family owner units qualifying for the goal represented 54.7 percent of all qualifying units, and Freddie Mac's single-family rental units were 13.8 percent of all qualifying units.

Reliance on household relative to area characteristics to meet goal. Tables C.2 and C.3 also show the allocation of units qualifying for the goal as related to the family income and area median income criteria in the goal definition. Very-low-income families (shown in the two leftmost columns in the tables) accounted for 83.4 percent of Fannie Mae's units qualifying under the goal in 1997, compared to 80.2 percent in 1993. For Freddie Mac, very-low-income families accounted for 81.0 percent of units qualifying under the goal in 1997 and 80.3 percent in 1993. In contrast, mortgage purchases from low-income areas (shown in the first and third columns in the tables) accounted for 33.7 percent of Fannie Mae's units qualifying under the goal in 1997, compared to 36.8 percent in 1993. The corresponding percentages for Freddie Mac were 38.3 percent in 1997 and 36.3 percent in 1993. Thus given the definition of special affordable housing in terms of household and area income characteristics, both GSEs have consistently relied substantially more on low-income characteristics of households than low-income characteristics of census tracts to meet this goal.

c. GSEs' Performance Relative to Market

Section E in Appendix A uses HMDA data with GSE loan-level data for home purchase mortgages on single-family owner-occupied properties in metropolitan areas to compare the GSEs' performance in special affordable lending to the performance of depositories and other lenders in the conventional conforming market. The main findings are: (a) both GSEs lag depositories and the overall market in providing mortgage funds for very low-income and other special affordable borrowers; and (b) the performance of Freddie Mac was particularly weak compared to Fannie Mae, the depositories, and the overall market. For example, between 1996 and 1998, special affordable borrowers accounted for 9.8 percent of the home loans purchased by Freddie Mac, 11.9 percent of Fannie Mae's purchases, 16.7 percent of home loans originated and retained by depositories, and 15.3 percent of all home loans originated in the conventional conforming market (see Table A.3 in Appendix A). While Freddie Mac has improved its performance, it has not closed the gap between its performance and that of the overall market. In 1992, special affordable loans accounted for 6.5 percent of Freddie Mac's purchases and 10.4 percent of market originations, for a ''Freddie-Mac-to-market'' ratio of 0.63. By 1998, that ratio had increased only to 0.73 (11.3 percent versus 15.5 percent). Thus, there is room for Freddie Mac to improve its purchases of home loans that qualify for the special affordable goals.

Section G in Appendix A discusses the role of the GSEs both in the overall special affordable market and in the different segments (single-family owner, single-family rental, and multifamily rental) of the special affordable market. The GSEs' special affordable purchases have accounted for 24 percent of all special affordable owner and rental units that were financed in the conventional conforming market during 1997. The GSEs' 24-percent share of the special affordable market was approximately three-fifths of their 39-percent share of the overall market. Even in the owner market, where the GSEs account for 50 percent of the market, their share of the special affordable market was only 35 percent. This analysis suggests that the GSEs are not leading the single-family market in purchasing loans that qualify for the Special Affordable Goal. There is room for the GSEs to improve their performance in purchasing affordable loans at the lower-income end of the market.

3. National Housing Needs of Low-Income Families in Low-Income Areas and Very-Low-Income Families

This discussion concentrates on very-low-income families with the greatest needs. It complements Section C of Appendix A, which presents detailed analyses of housing problems and demographic trends for lower-income families which are relevant to the issue addressed in this part of Appendix C.

Data from the 1995 American Housing Survey demonstrate that housing problems and needs for affordable housing continue to be more pressing in the lowest-income categories than among moderate-income families, as established in HUD's analysis for the 1995 Final Rule. Table C.4 displays figures on several types of housing problems—high housing costs relative to income, physical housing defects, and crowding—for both owners and renters. Figures are presented for households experiencing multiple (two or more) of these problems as well as households experiencing a severe degree of either cost burden or physical problems. Housing problems in 1995 were much more frequent for the lowest-income groups.[2] Incidence of problems is shown for households in the income range covered by the special affordable goal, as well as for higher income households.

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[2] Tabulations of the 1995 American Housing Survey by HUD's Office of Policy Development and Research. The results in the table categorize renters reporting housing assistance as having no housing problems.

Table C.4

Incidence of Housing Problems by Household Income, 1995

	Household Income as Percent of Area Median Income			
	0-60%	61-80%	81-100%	> 100%
Renter Households (Thousands)				
Total	17,428	4,579	3,896	8,246
Rent Burden > 50% of Income	6,056	100	25	5
31-50%	5,385	1,299	482	219
Severely Inadequate Housing	587	60	68	134
Moderately Inadequate	1,415	290	197	376
Crowded	1,282	159	99	133
Multiple Problems*	2,022	75	42	34
Priority Problems**	5,492	160	94	139
As Percent of Total				
Rent Burden > 50% of Income	34.7%	2.2%	0.6%	0.1%
31-50%	30.9%	28.4%	12.4%	2.7%
Severely Inadequate Housing	3.4%	1.3%	1.7%	1.6%
Moderately Inadequate	8.1%	6.3%	5.1%	4.6%
Crowded	7.4%	3.5%	2.5%	1.6%
Multiple Problems*	11.6%	1.6%	1.1%	0.4%
Priority Problems**	31.5%	3.5%	2.4%	1.7%
Owner Households (Thousands)				
Total	19,366	7,758	6,492	29,927
Cost Burden > 50% of Income	4,177	437	147	152
31-50%	4,027	1,473	913	1,639
Severely Inadequate Housing	536	123	101	412
Moderately Inadequate	995	266	205	604
Crowded	299	157	95	329
Multiple Problems*	753	130	79	106
Priority Problems**	4,602	550	247	559
As Percent of Total				
Cost Burden > 50% of Income	21.6%	5.6%	2.3%	0.5%
31-50%	20.8%	19.0%	14.1%	5.5%
Severely Inadequate Housing	2.8%	1.6%	1.6%	1.4%
Moderately Inadequate	5.1%	3.4%	3.2%	2.0%
Crowded	1.5%	2.0%	1.5%	1.1%
Multiple Problems*	3.9%	1.7%	1.2%	0.4%
Priority Problems**	23.8%	7.1%	3.8%	1.9%

* Two or three of the following: housing costs >30%, severe or moderate physical problems, and overcrowding.
** Housing costs >50% of income or severely inadequate housing among unassisted households.
Note: Incomes of renter households are estimated based on rents, adjusted for number of bedrooms.

This analysis shows that priority problems of severe cost burden or severely inadequate housing are noticeably concentrated among renters and owners with incomes below 60 percent of area median income (31.5 percent of renter households and 23.8 percent of owner households). In contrast, 3.5 percent of renter households and 7.1 percent of owner households with incomes above 60 percent of area median income, up to 80 percent of area median income, had priority problems. For more than two-thirds of the very-low-income renter families with worst case problems, the only problem was affordability—they do not have problems with housing adequacy or crowding.

4. The Ability of the Enterprises to Lead The Industry in Making Mortgage Credit Available for Low-Income and Very-Low-Income Families

The discussion of the ability of Fannie Mae and Freddie Mac to lead the industry in Section C.5 of Appendix A is relevant to this factor—the GSEs' roles in the owner and rental markets, their role in establishing widely-applied underwriting standards, their role in the development of new technology for mortgage origination, their strong staff resources, and their financial strength. Additional analysis on the potential ability of the enterprises to lead the industry in the low- and very-low-income market appears below—in Section D.2 generally, and in Section D.3 with respect to multifamily housing.

5. The Need To Maintain the Sound Financial Condition of the GSEs

HUD has undertaken a separate, detailed economic analysis of this proposed rule, which includes consideration of (a) the financial returns that the GSEs earn on low- and moderate-income loans and (b) the financial safety and soundness implications of the housing goals. Based on this economic analysis and discussions with the Office of Federal Housing Enterprise Oversight, HUD concludes that the proposed goals raise minimal, if any, safety and soundness concerns.

D. Determination of the Goal

Several considerations, many of which are reviewed in Appendixes A and B and in previous sections of this Appendix, led to the determination of the Special Affordable Housing Goal.

1. Severe Housing Problems

The data presented in Section C.3 demonstrate that housing problems and needs for affordable housing are much more pressing in the lowest-income categories than among moderate-income families. The high incidence of severe problems among the lowest-income renters reflects severe shortages of units affordable to those renters. At incomes below 60 percent of area median, 34.7 percent of renters and 21.6 percent of owners pay more than 50 percent of their income for housing. In this same income range, 65.6 percent of renters and 42.4 percent of owners pay more than 30 percent of their income for housing. 31.5 percent of renters and 23.8 percent of owners exhibit ''priority problems'', meaning housing costs over 50 percent of income or severely inadequate housing.

2. GSE Performance and the Market

a. GSEs' Single-Family Performance

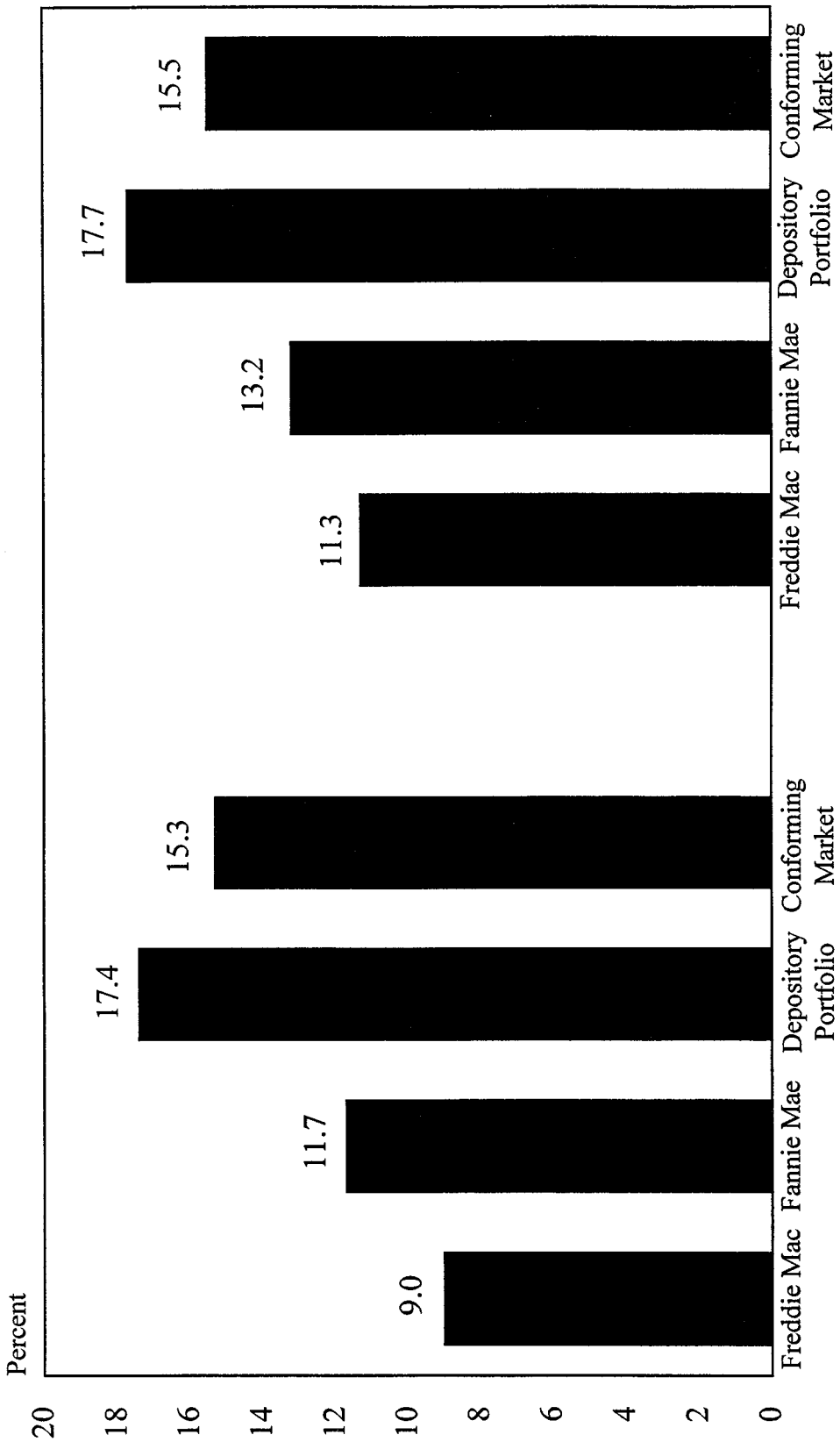
The Special Affordable Housing Goal is designed, in part, to ensure that the GSEs maintain a consistent focus on serving the very low-income portion of the housing market where housing needs are greatest. The bulk of the GSEs' low- and moderate-income mortgage purchases are for the higher-income portion of this category. The lowest-income borrowers account for a relatively small percentage of each GSE's below-median income purchases—25.9 percent of Freddie Mac's 1998 single-family low-mod owner-occupied mortgage purchases financed homes for single-family homeowners with incomes below 60 percent of area median; the corresponding share was 25.6 percent for Fannie Mae in 1998.

b. Single-Family Market Comparisons in Metropolitan Areas

Section C compared the GSEs' performance in special affordable lending to the performance of depositories and other lenders in the conventional conforming market for single-family home loans. The analysis showed that both GSEs lag depositories and the overall market in providing mortgage funds for very low-income and other special affordable borrowers; and that the performance of Freddie Mac was particularly weak compared to Fannie Mae, the depositories, and the overall market. Figure C.3 illustrates these findings. In 1998, special affordable borrowers accounted for 11.3 percent of the home loans purchased by Freddie Mac, 13.2 percent of Fannie Mae's purchases, 17.7 percent of home loans originated and retained by depositories, and 15.5 percent of all home loans originated in the conventional conforming market. Section C also notes that Freddie Mac has improved its performance since 1992, but it has not made as much progress as Fannie Mae has in closing the gap between its performance and that of the overall market. Thus, there is room for both GSEs, but particularly Freddie Mac, to improve its purchases of home loans that qualify for the special affordable goals.

Figure C.3

The Share Of GSE And Conventional Conforming Mortgages for Special Affordable Borrowers, 1997 and 1998



Source: Conforming market and depository data are from 1997 and 1998 HMDA; GSE data are from loan-level data reported to HUD. Data are for single-family home purchase loans in metropolitan areas. See Table A.4a for further explanation.

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c. Overall Market Comparisons

Section C compared the GSEs' role in the overall market with their role in the special affordable market. The GSEs' purchases have provided financing for 2,893,046 dwelling units, which represented 39 percent of the 7,443,736 single-family and multifamily units that were financed in the conventional conforming market during 1997. However, in the special affordable part of the market, the 508,377 units that were financed by GSE purchases represented only 24 percent of the 2,158,750 dwelling units that were financed in the market. Thus, there appears to be ample room for the GSEs to improve their performance in the Special Affordable market.

3. Reasons for Increasing the Special Affordable Housing Goal

The reasons the Secretary is increasing the Special Affordable Goal are essentially the same as those given in Section H.4 of Appendix A for the Low- and Moderate-Income Goal. Although that discussion will not be repeated here, the main considerations are the following: Freddie Mac's re-entry into the multifamily market; the underlying strength of the primary mortgage market for lower-income families; the need for the GSEs, and particularly Freddie Mac, to improve their purchases of mortgages for lower-income families and their communities; the existence of several low-income market segments that would benefit from more active efforts by the GSEs; and the substantial profits and financial capacity of Fannie Mae and Freddie Mac. The Department's analysis shows that the GSEs are not leading the market in purchasing loans that qualify for the Special Affordable Goal. There are also plenty of opportunities for the GSEs to improve their performance in purchasing special affordable loans. The GSEs' accounted for only 24 percent of the special affordable market in 1997—a figure substantially below their 39-percent share of the overall market.

4. Multifamily Purchases—Further Analysis

The multifamily sector is especially important in the establishment of the special affordable housing goals for Fannie Mae and Freddie Mac because of the relatively high percentage of multifamily units meeting the special affordable goal as compared with single-family. In 1997, 57 percent of units backing Freddie Mac's multifamily acquisitions met the special affordable goal, representing 31 percent of units counted toward its special affordable goal, at a time when multifamily units represented only 8 percent of total annual purchase volume. Corresponding percentages for Fannie Mae were as follows: 54 percent of units backing multifamily acquisitions met the special affordable goal; multifamily represented 44 percent of units meeting the special affordable goal but only 13 percent of total purchase volume.[3]

Significant new developments in the multifamily mortgage market have occurred since the publication of the current version of the GSE Final Rule in December 1995, most notably the increased rate of debt securitization via Commercial Mortgage Backed Securities (CMBS) and a higher level of equity securitization by Real Estate Investment Trusts (REITs). Fannie Mae has played a role in establishing underwriting standards that have been widely emulated in the growth of the CMBS market. Freddie Mac has contributed to the growth and stability of the CMBS sector by acting as an investor.

Increased securitization of debt and equity interests in multifamily property present the GSEs with new challenges as well as new opportunities. The GSEs are currently experiencing a higher degree of secondary market competition than they did in 1995. At the same time, recent volatility in the CMBS market underlines the need for an ongoing GSE presence in the multifamily secondary market. The potential for an increased GSE presence is enhanced by virtue of the fact that an increasing proportion of multifamily mortgages are originated to secondary market standards.

Despite the expanded presence of the GSEs in the multifamily mortgage market and the rapid growth in multifamily securitization by means of CMBS, increased secondary market liquidity does not appear to have benefited all segments of the market equally. Small properties with 5–50 units appear to have been adversely affected by excessive borrowing costs as described in Appendix A. Another market segment that appears experiencing difficulty in obtaining mortgage credit consists of multifamily properties with significant rehabilitation needs. Properties that are more than 10 years old are typically classified as ''C'' or ''D'' properties, and are considered less attractive than newer properties by many lenders and investors

Context. As discussed above, in the 1995 Final Rule, the multifamily subgoal for the 1996–1999 period was set at 0.8 percent of the dollar value of each GSEs' respective 1994 origination volume, or $998 million for Freddie Mac and $1.29 billion for Fannie Mae. Freddie Mac exceeded the goal by a narrow margin in 1996 and more comfortably in 1997–1998. Fannie Mae has exceeded the goal by a wide margin in all three years.

The experience of the past two years suggests the following preliminary findings regarding the multifamily special affordable subgoal:

The goal has contributed toward a significantly increased presence by Freddie Mac in the multifamily market.

Fannie Mae's performance has surpassed the goal by such a wide margin that it can be reasonably inferred that the goal has little effect on their behavior.

- The current goal is out of date, as it is based on market conditions in 1993–94.
- The goal has remained at a fixed level, despite significant growth in the multifamily market and in the GSEs' administrative capabilities with regard to multifamily.
- Given that the GSEs have relatively large fixed costs in purchasing multifamily loans, the minimum cost method of meeting the goal involves purchasing a relatively small number of mortgages, each with a relatively large UPB. Thus the goal may provide the GSEs with an additional incentive to purchase mortgages on large properties.

HUD's proposed rule establishes the multifamily subgoal at 0.9 percent of the dollar volume of combined (single family and multifamily) 1998 mortgage purchases in calendar year 2000, and 1.0 percent in each of calendar years 2001–2003. This implies the following thresholds for the two GSEs:[4]

	2001–2003 (in billions)	2000 (in billions)
Fannie Mae	$3.31	$3.68
Freddie Mac	2.46	2.73

The proposed subgoal can be compared with Fannie Mae's and Freddie Mac's 1998 multifamily special affordable multifamily acquisition volumes of $3.5 billion and $2.7 billion, respectively.[5] A 1.0 percent dollar-based multifamily subgoal for 2001–2003 would sustain and likely increase the efforts of both GSEs in the multifamily mortgage market, with particular emphasis upon the special affordable segment.

HUD has identified three alternative approaches for specifying multifamily subgoals for the GSEs, as follows:

(1) Option One—Subgoal Based on Number of Units. In this approach, the multifamily special affordable subgoal would be expressed as a minimum number of units meeting the Special Affordable Housing Goal. A multifamily subgoal for 2001–2003 established at the level of the dollar-based subgoal defined above, divided by $22,953, which is the average of Fannie Mae's and Freddie Mac's ratios of unpaid principal balance to number of units in multifamily properties counted toward the Special Affordable Housing Goal in 1997 (as

[3] Source: HUD analysis of GSE loan-level data. Loans with missing data are excluded from the calculations of the special affordable proportions of multifamily and the multifamily proportion of special affordable.

[4] HUD has determined that the total dollar volume of the GSEs' combined (single and multifamily) mortgage purchases in 1998, measured in unpaid principal balance at acquisition, was as follows: Fannie Mae $367.6 billion; Freddie Mac $273.2 billion.

[5] HUD analysis of GSE loan-level data.

determined by HUD) would generate annual multifamily special affordable subgoals of 160,328 units for Fannie Mae and 118,939 units for Freddie Mac. These compare with Fannie Mae's multifamily special affordable multifamily acquisition volumes of 130,374 units in 1997 and 138,822 units in 1998, and Freddie Mac's performance of 56,255 units in 1997 and 120,776 units in 1998.[6] Such a multifamily subgoal for 2001–2003 would sustain and likely increase the efforts of both GSEs in the multifamily mortgage market, with particular emphasis upon the special affordable segment.[7]

(2) Option Two—Subgoal As A Percent of GSEs' Current Multifamily Mortgage Purchases. Another possible approach is to establish the special affordable multifamily subgoal as a minimum percentage of each GSE's current total dollar volume of multifamily mortgage purchases. For example, the subgoal level for 2001–2003 could be expressed as 58.0 percent of a GSE's multifamily dollar volume. The 58.0 percent threshold under this subgoal option compares with 1997 performance of 54.2 percent for Fannie Mae and 56.6 percent for Freddie Mac.[8] A 58.0 percent multifamily subgoal for 2001–2003 would sustain and likely increase the efforts of both GSEs in the special affordable segment of the multifamily mortgage market.[9]

(3) Option Three—Subgoal Based on Number of Mortgages Acquired. Because the GSEs incur relatively large fixed costs in purchasing multifamily mortgage loans, another alternative to the Special Affordable Multifamily Housing Subgoal would be to establish a subgoal that would be based on the number of mortgages acquired. In this approach, the Special Affordable multifamily subgoal would be expressed as a minimum number of each GSEs' total mortgage purchases. If all the units in the property securing the mortgage are not eligible for the Special Affordable Housing Goal, then subgoal performance would be pro-rated based on the number of qualifying units. In other words, if one mortgage secured a 100-unit property and 50 of the units qualified for the Special Affordable Housing Goal, then subgoal credit would be counted as one-half of a mortgage.[10]

A multifamily subgoal for 2001–2003 established at 0.035 percent of 1997 combined single-family and multifamily purchase dollar volume in number of mortgages acquired (as determined by HUD) would generate annual subgoals of 1,129 multifamily special affordable mortgages for Fannie Mae and 854 for Freddie Mac.[11] A 0.035 percent mortgage-based multifamily subgoal for 2001–2003 would sustain and likely increase the efforts of both GSEs in the multifamily mortgage market, with particular emphasis upon the special affordable segment.[12]

The preamble to this Proposed Rule includes a more complete analysis of these alternatives, with a request for public comments on the alternatives.

5. Conclusion

HUD has determined that the proposed Special Affordable Housing Goal addresses national housing needs within the income categories specified for this goal, while accounting for the GSEs' past performance in purchasing mortgages meeting the needs of very-low-income families and low-income families in low-income areas. HUD has also considered the size of the conventional mortgage market serving very-low-income families and low-income families in low-income areas. Moreover, HUD has considered the GSEs' ability to lead the industry as well as their financial condition. HUD has determined that a Special Affordable Housing Goal of 18 percent in 2000, and 20 percent in 2001–2003, is both necessary and achievable. HUD has also determined that a multifamily special affordable subgoal set at 0.9 percent of the dollar volume of combined (single family and multifamily) 1998 mortgage purchases in 2000, and 1.0 percent in 2001–2003, or one of the alternatives proposed here, is both necessary and achievable.

Appendix D—Estimating the Size of the Conventional Conforming Market for Each Housing Goal

A. Introduction

In establishing the three housing goals, the Secretary is required to assess, among a number of factors, the size of the conventional market for each goal. This Appendix explains HUD's methodology for estimating the size of the conventional market for each of the three housing goals. Following this introduction, Section B describes the main components of HUD's market-share model and identifies those parameters that have a large effect on the relative market shares. Sections C and D discuss two particularly important market parameters, the size of the multifamily market and the share of the single-family mortgage market accounted for by rental properties. With this as background, Section E provides a more systematic presentation of the model's equations and main assumptions. Sections F, G, and H report HUD's estimates for the Low- and Moderate-Income Goal, the Central Cities, Rural Areas, and other Underserved Areas Goal, and the Special Affordable Housing Goal, respectively. Finally, Section I examines the impact of higher FHA loan limits on the conventional market.

In developing this rule, HUD has carefully reviewed existing information on mortgage activity in order to understand the weakness of various data sources and has conducted sensitivity analyses to show the effects of alternative parameter assumptions. Data on the multifamily mortgage market from HUD's Property Owners and Managers' Survey (POMS), not available at the time published the 1995 GSE Final Rule, is utilized here. HUD is well aware of uncertainties with some of the data and much of this Appendix is spent discussing the effects of alternative assumptions about data parameters and presenting the results of an extensive set of sensitivity analyses.

In a critique of HUD's market share model, Blackley and Follain (1995, 1996) concluded that conceptually HUD had chosen a reasonable approach to determining the size of the mortgage market that qualifies for each of the three housing goals.[1] Blackley and Follain correctly note that the challenge lies in getting accurate estimates of the model's parameters.

This appendix reviews in some detail HUD's efforts to combine information from several mortgage market data bases to obtain reasonable values for the model's parameters. Numerous sensitivity analyses are performed in order to arrive at a set of reasonable market estimates.

The single-family market analysis in this appendix is based heavily on HMDA data for the years 1992 to 1998. The HMDA data for 1998 were not released until August 1999, which gave HUD little time to incorporate that data fully into the analyses reported in these Appendices; thus, the discussion below will often focus on the year 1997, with any differences from 1998 briefly noted. However, it should be noted that the year 1997 represents a more typical mortgage market than the heavy refinancing year of 1998. Still, important shifts in mortgage funding that occurred during 1998 will be highlighted in order to offer as complete and updated analysis as possible.

B. Overview of HUD's Market Share Methodology

1. Definition

The size of the market for each housing goal is one of the factors that the Secretary

[6] Source: HUD analysis of GSE loan-level data. Fannie Mae's 1998 performance figures may not fully reflect its multifamily special affordable acquisition capabilities because Fannie Mae did not obtain data necessary to qualify many of their multifamily seasoned loan purchases for the special affordable goal.

[7] If this option were selected, appropriate subgoal thresholds for the year 2000 transition period could be developed.

[8] Source: HUD analysis of GSE loan-level data. 1997 figures are used here because the share of Fannie Mae's multifamily acquisitions meeting the special affordable goal is unusually low in 1998 as noted above because Fannie Mae did not verify whether proceeds of seasoned multifamily loans it acquired were ''recycled'' into new lending per FHEFSSA requirements.

[9] If this option were selected, appropriate subgoal thresholds for the year 2000 transition period could be developed.

[10] A similar pro-rating technique is specified in HUD's regulations at 24 CFR, Section 81.14(d)(2), for purposes of calculating credit toward the multifamily special affordable subgoal. Specifically, the mortgage loan amount is multiplied by the proportion of units qualifying toward the special affordable goal.

[11] HUD has determined that the number of mortgage loans purchased by the GSEs in 1998 was as follows: Fannie Mae—3,226,786; Freddie Mac—2,439,194.

[12] If this option were selected, appropriate subgoal thresholds for the year 2000 transition period could be developed.

[1] Dixie M. Blackley and James R. Follain, ''A Critique of the Methodology Used to Determine Affordable Housing Goals for the Government Sponsored Housing Enterprises,'' unpublished report prepared for Office of Policy Development and Research, Department of Housing and Urban Development, October 1995; and ''HUD's Market Share Methodology and its Housing Goals for the Government Sponsored Enterprises,'' unpublished paper, March 1996.

is required to consider when setting the level of each housing goal.[2] Using the Low- and Moderate-Income Housing Goal as an example, the market share in a particular year is defined as follows:

Low- and Moderate-Income Share of Market: The number of dwelling units financed by the primary mortgage market in a particular calendar year that are occupied by (or affordable to, in the case of rental units) families with incomes equal to or less than the area median income *divided by* the total number of dwelling units financed in the conforming conventional primary mortgage market.

There are three important aspects to this definition. First, the market is defined in terms of ''dwelling units'' rather than, for example, ''value of mortgages'' or ''number of properties.'' Second, the units are ''financed'' units rather than the entire stock of all mortgaged dwelling units; that is, the market-share concept is based on the mortgage flow in a particular year, which will be smaller than total outstanding mortgage debt. Third, the low- and moderate-income market is expressed relative to the overall conforming conventional market, which is the relevant market for the GSEs.[3] The low- and moderate-income market is defined as a percentage of the conforming market; this percentage approach maintains consistency with the method for computing each GSE's performance under the Low- and Moderate-Income Goal (that is, the number of low- and moderate-income dwelling units financed by GSE mortgage purchases relative to the overall number of dwelling units financed by GSE mortgage purchases).

2. Three-Step Procedure

Ideally, computing the low- and moderate-income market share would be straightforward, consisting of three steps:

(Step 1) Projecting the market shares of the four major property types included in the conventional conforming mortgage market:
- (a) Single-family owner-occupied dwelling units (SF–O units);
- (b) Rental units in 2–4 unit properties where the owner occupies one unit (SF 2–4 units);[4]
- (c) Rental units in one-to-four unit investor-owned properties (SF Investor units); and,
- (d) Rental units in multifamily (5 or more units) properties (MF units).[5]

(Step 2) Projecting the ''goal percentage'' for each of the above four property types (for example, the ''Low- and Moderate-Income Goal percentage for single-family owner-occupied properties'' is the percentage of those dwelling units financed by mortgages in a particular year that are occupied by households with incomes below the area median).

(Step 3) Multiplying the four percentages in (2) by their corresponding market shares in (1), and summing the results to arrive at an estimate of the overall share of dwelling units financed by mortgages that are occupied by low- and moderate-income families.

The four property types are analyzed separately because of their differences in low- and moderate-income occupancy. Rental properties have substantially higher percentages of low- and moderate-income occupants than owner-occupied properties. This can be seen by the following illustration of Step 3's basic formula for calculating the size of the low- and moderate-income market:[6]

Property type	(Step 1) share of market (percent)	(Step 2) low-mod share (percent)	(Step 3) multiply (1) x (2) (percent)
(a) SF–0	71.1	40.0	28.4
(b) SF 2–4	2.0	90.0	1.8
(c) SF Investor	10.7	90.0	9.6
(d) MF	16.2	90.0	14.6
Total Market	100.0		54.4

In this example, low- and moderate-income dwelling units are estimated to account for 54 percent of the total number of dwelling units financed in the conforming mortgage market. To examine the other housing goals, the ''goal percentages'' in Step 2 would be changed and the new ''goal percentages'' would be multiplied by Step 1's property distribution, which remains constant. For example, the Central Cities, Rural Areas, and Other Underserved Areas Goal[7] would be derived as follows under one set of assumptions:

Property Type	(Step 1) share of market (percent)	(Step 2) underserved area share (percent)	(Step 3) multiply (1) x (2) (percent)
(a) SF–0	71.1	25.0	17.8
(b) SF 2–4	2.0	42.5	0.9
(c) SF Investor	10.7	42.5	4.5
(d) MF	16.2	48.0	7.8
Total Market	100.0		31.0

In this example, units eligible under the Underserved Areas Goal are estimated to account for 31 percent of the total number of dwelling units financed in the conforming mortgage market.

3. Data Issues

Unfortunately, complete and consistent mortgage data are not readily available for carrying out the above three steps. A single data set for calculating either the property shares or the housing goal percentages does not exist. However, there are several major data bases that provide a wealth of useful information on the mortgage market. HUD combined information from the following

[2] Sections 1332(b)(4), 1333(a)(2), and 1334(b)(4).

[3] So-called ''jumbo'' mortgages, greater than $227,150 in 1998 for 1-unit properties, are excluded in defining the conforming market. There is some overlap of loans eligible for purchase by the GSEs with loans insured by the FHA and guaranteed by the Veterans Administration.

[4] The owner of the SF 2–4 property is counted in (a).

[5] Property types (b), (c), and (d) consist of rental units. Property types (b) and (c) must sometimes be combined due to data limitations; in this case, they are referred to as ''single-family rental units'' (SF–R units).

[6] The property shares and low-mod percentages reported here are based on one set of model assumptions; other sets of assumptions are discussed in Section E.

[7] This goal will be referred to as the ''Underserved Areas Goal''.

sources: the Home Mortgage Disclosure Act (HMDA) reports, the American Housing Survey (AHS), HUD's Survey of Mortgage Lending Activity (SMLA), Property Owners and Managers Survey (POMS) and the Census Bureau's Residential Finance Survey (RFS). In addition, information on the mortgage market was obtained from the Mortgage Bankers Association, Fannie Mae, Freddie Mac and other organizations.

Property Shares. To derive the property shares, HUD started with forecasts of single-family mortgage originations (expressed in dollars). These forecasts, which are available from the GSEs and industry groups such as the Mortgage Bankers Association, are based on HUD's SMLA. The SMLA does not provide information on conforming mortgages, on owner versus renter mortgages, or on the number of units financed. Thus, to estimate the number of single-family units financed in the conforming conventional market, HUD had to project certain market parameters based on its judgment about the reliability of different data sources. Sections D and E report HUD's findings related to the single-family market.

Total market originations are obtained by adding multifamily originations to the single-family estimate. Because of the wide range of estimates available, the size of the multifamily mortgage market turned out to be one of the most controversial issues raised during the 1995 rule-making process. In 1997, HMDA reported about $20.0 billion in multifamily originations while the SMLA reported more than double that amount ($47.9 billion). Because most renters qualify under the Low- and Moderate-Income Goal, the chosen market size for multifamily can have a substantial effect on the overall estimate of the low- and moderate-income market (as well as on the estimate of the special affordable market). Thus, it is important to consider estimates of the size of the multifamily market in some detail, as Section C does. In addition, given the uncertainty surrounding estimates of the multifamily mortgage market, it is important to consider a range of market estimates, as Sections G–H do.

Goal Percentages. To derive the goal percentages for each property type, HUD relied heavily on HMDA, AHS, and POMS data. For single-family owner originations, HMDA provides comprehensive information on borrower incomes and census tract locations for metropolitan areas. Unfortunately, it provides no information on the incomes of renters living in mortgaged properties (either single-family or multifamily) or on the rents (and therefore the affordability) of rental units in mortgaged properties. The AHS, however, does provide a wealth of information on rents and the affordability of the outstanding stock of single-family and multifamily rental properties. An important issue here concerns whether rent data for the stock of rental properties can serve as a proxy for rents on newly-mortgaged rental properties. The POMS data, which were not available during the 1995 rule-making process, are used below to examine the rents of newly-mortgaged rental properties; thus, the POMS data supplements the AHS data. The data base issues as well as other technical issues related to the goal percentages (such as the need to consider a range of mortgage market environments) are discussed in Sections F, G, and H, which present the market share estimates for the Low- and Moderate-Income Goal, the Underserved Areas Goal, and the Special Affordable Goal, respectively.

4. Conclusions

HUD is using the same basic methodology for estimating market shares that it used during 1995. As demonstrated in the remainder of this Appendix, HUD has attempted to reduce the range of uncertainty around its market estimates by carefully reviewing all known major mortgage data sources and by conducting numerous sensitivity analyses to show the effects of alternative assumptions. Sections C, D, and E report findings related to the property share distributions called for in Step 1, while Sections F, G, and H report findings related to the goal-specific market parameters called for in Step 2. These latter sections also report the overall market estimates for each housing goal calculated in Step 3.

During the 1995 rule-making process, HUD contracted with the Urban Institute to comment on the reasonableness of its market share approach and to conduct analyses related to specific comments received from the public about its market share methodology. HUD continues to rely on several findings from the Urban Institute reports and they are again discussed throughout this Appendix. Since 1995, HUD has continued to examine the reliability of data sources about mortgage activity. HUD's Office of Policy Development and Research has published several studies concerning the reliability of HMDA data.[8] In addition, since 1995, HUD has gathered additional information regarding the mortgages for multifamily and single-family rental properties through the Property Owners and Managers Survey (POMS). Findings regarding the magnitude of multifamily originations, as well as the rent and affordability characteristics of mortgages backing both single-family and multifamily rental properties have been made by combining data from POMS with that from internal Census Bureau files from the 1995 American Housing Survey-National Sample. The results of these more recent analyses will be presented in the following sections.

C. Size of the Conventional Multifamily Mortgage Market

This section derives projections of conventional multifamily mortgage origination volume.[9]

The multifamily sector is especially important in the establishment of housing goals for Fannie Mae and Freddie Mac because multifamily properties are overwhelmingly occupied by low- and moderate-income families. For example, in 1997, 13 percent of units financed by Fannie Mae were multifamily, but 90 percent of those units met the Low- and Moderate-Income Goal, accounting for 27 percent of all of Fannie Mae's low- and moderate-income purchases for that year.[10] Multifamily acquisitions are also of strategic significance with regard to the Special Affordable Goal. In 1997, 57 percent of units backing Freddie Mac's multifamily acquisitions met the Special Affordable Goal, representing 31 percent of units counted toward its Special Affordable Goal, at a time when multifamily units represented only 8 percent of total annual purchase volume.[11]

This discussion is organized as follows: Section 1 identifies and evaluates available historical data resources. Section 2 undertakes an analysis of estimated conforming multifamily origination volume for 1995 through 1998. Section 3 establishes projections regarding conventional multifamily origination volume for the year 2000 and beyond.

1. Conventional multifamily origination volumes, 1987–1997

Two of the principal sources of evidence on conventional multifamily origination volumes are Home Mortgage Disclosure Act data base (HMDA) and the HUD Survey of Mortgage Lending Activity (SMLA).

a. Survey of Mortgage Lending Activity (SMLA)

The data that enter into SMLA are compiled by HUD from source materials generated in various ways from the different institutional types of mortgage lenders. Data on savings associations are collected for HUD by the Office of Thrift Supervision; these data cover all thrifts, not a sample. Mortgage company and life insurance company data are collected through sample surveys conducted by the Mortgage Bankers Association of America and the American Council of Life Insurance, respectively. Data on commercial banks and mutual savings banks are collected through sample surveys conducted by the American Bankers Association. The Federal credit agencies and State credit agencies report their data directly to HUD. Local credit agency data are collected by HUD staff from a publication that lists their mortgage financing activities.

b. Home Mortgage Disclosure Act (HMDA)

HMDA data are collected by lending institutions and reported to their respective regulators as required by law. HMDA was

[8] See Randall M. Scheessele, *HMDA Coverage of the Mortgage Market,* Housing Finance Working Paper No. 7, Office of Policy Development and Research, Department of Housing and Urban Development, July 1998; and 1998 *HMDA Highlights,* Housing Finance Working Paper No. HF–009, Office of Policy Development and Research, Department of Housing and Urban Development, October 1999.

[9] Because they are not counted toward the GSE housing goals (with the exception of a relatively small risk-sharing program), FHA mortgages are excluded from this analysis. Other categories of mortgages, considering the type of insurer, servicer, or holder, do not tend to have mortgage characteristics that appear to differ substantially from the multifamily mortgages that are purchased by Fannie Mae and Freddie Mac. There is thus no particular basis for excluding them.

[10] Corresponding percentages for Freddie Mac were 95 percent and 19 percent. Missing data are excluded from these calculations. Source: Annual Housing Activity Reports, 1997.

[11] Corresponding percentages for Fannie Mae were 54 percent and 44 percent.

enacted as a mechanism to permit the public to determine locations of properties on which local depository institutions make mortgage loans, ''to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. . .'' (12 USC 2801). HMDA reporting requirements generally apply to all depository lenders with more than $29 million in total assets and which have offices in Metropolitan Statistical Areas. Reporting is generally required of other mortgage lending institutions (e.g. mortgage bankers) originating at least 100 home purchase loans annually provided that home purchase loan originations exceed 10 percent of total loans. Reporting is required for all loans closed in the name of the lending institution and loans approved and later acquired by the lending institution, including multifamily loans. Thus, the HMDA data base concentrates on lending by depository institutions in metropolitan areas but, unlike SMLA and RFS, it is not a sample survey; it is intended to include loan-level data on all loans made by the institutions that are required to file reports.

Table D.1 presents figures for 1987 through 1997 for SMLA and HMDA.[12] The main question raised by this comparison is why SMLA and HMDA report such different multifamily estimates. Part of the problem arises from double-counting of originations by mortgage banks in the American Bankers Association (ABA) and Mortgage Bankers Association (MBA) surveys conducted as part of SMLA. Originations by mortgage banks which are affiliated with commercial banks may be counted in both surveys.

There is also evidence that undercounting of multifamily originations in HMDA contributes to observed discrepancies between HMDA and SMLA. For example, less than half of Fannie Mae's 1997 acquisition volume of mortgages originated in 1997 are reported in HMDA. HMDA reports that Freddie Mac purchased 14 loans from mortgage banks in 1997, yet in loan-level data provided to HUD, Freddie Mac indicates that purchased 453 loans from mortgage bankers.[13] Further evidence of the poor quality of the HMDA multifamily data is the fact that it reported that in 1997 a larger volume of multifamily loans were sold to Freddie Mac than to Fannie Mae, when in fact Freddie Mac's purchases were less than that of Fannie Mae's, based on loan-level data provided by the GSEs to HUD.

[12] The comparison between SMLA and HMDA is provided only through 1997 because 1998 SMLA data were not available as of the time of this writing.

[13] Some of loans in the GSE data may have been originated prior to 1997, and therefore not included in 1997 HMDA totals. However, because mortgage banks ordinarily do not hold mortgages in portfolio, it is implausible that a majority of Freddie Mac's purchases from mortgage banks were originated prior to 1997.

Table D.1

Conventional Multifamily Market Estimates
(billions of dollars)

Year	SMLA	HMDA
1987	38.3	
1988	35.2	
1989	30.2	
1990	30.1	
1991	24.6	
1992	25.2	10.2
1993	30.0	12.8
1994	31.7	14.8
1995	37.9	12.8
1996	43.7	16.0
1997	44.6	19.5

Table D.2

Comparison of SMLA and HMDA Figures, 1997 Conventional Multifamily Originations
(millions of dollars)

Type of Lender	SMLA	HMDA
Commercial Banks	$ 24,570	$ 10,766
Savings & Loans; Multifamily Savings Bank	$ 7,164	$ 7,009
Credit Unions	$ -	$ 27
Life Insurance Companies	$ 1,407	$ -
Pension Funds (incl. State & Local Gov't)	$ 1,063	$ -
Mortgage Companies	$ 9,134	$ 1,746
Federal Credit Agencies	$ 408	$ -
State and Local Gov't Credit Agencies	$ 840	$ -
TOTAL	$ 44,586	$ 19,548

(Totals may not add due to rounding.)

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In addition, the HMDA data base does not cover a number of important categories of multifamily lenders such as life insurance companies and State housing finance agencies, providing another reason that the HMDA data understates the size of the multifamily market.

With this in mind, we proceed to an examination of origination volumes reported by these two data sources by type of lender. Table D.2 shows the basic figures. The columns headed ''SMLA'' and ''HMDA'' show aggregate dollar volumes of loan originations by category of originator in 1997.

In 1995, the Urban Institute conducted extensive analysis to address the issue of discrepancies between HMDA and SMLA. The researchers found that the 1993 SMLA multifamily figure ($30 billion in conventional originations) was too high, chiefly because of upward bias in the commercial bank originations figure, and the HMDA estimate ($12.8 billion) was too low for a variety of reasons including the omission of some categories of lenders.[14]

2. Alternative Measures

The inconsistencies between SMLA and HMDA underscore the importance of finding other ways to measure the size of the conventional multifamily market. The remainder of this discussion analyzes alternative measures based on (a) analysis of the HUD Property Owners and Managers Survey (POMS); (b) a statistical model developed by Urban Institute researchers; and (c) combining data from a variety of sources in a manner that avoids double-counting.

a. HUD Property Owners and Managers Survey (POMS)

HUD's analysis of data in the HUD Property Owners and Managers Survey (POMS) yields an estimated size of the 1995 multifamily origination market of approximately $37 billion. Analysis of this survey data is complicated by virtue of the fact that data on mortgage loan amount are missing for a large number of properties, requiring the imputation of missing values, and also because the mortgage loan amount is ''topcoded'' on some observations in order to protect the privacy of respondents. Such topcoding complicates the use of multiple regression techniques for imputation of missing values. In order to more effectively utilize regression techniques, HUD staff and contractors were sworn in as special employees of the Census Bureau in order to gain access to the internal Census file. The regression specification with the greatest explanatory power imputed missing loan amounts on the basis of number of units, region of the country, and a dummy variable for large properties with more than 1,000 units.[15] The use of this specification yielded an estimated total multifamily market size of $39.1 billion. After subtracting $2.3 billion in FHA-insured originations, this yields $36.7 billion as the estimated size of the conforming multifamily mortgage market in 1995, compared with the SMLA figure of $37.9 billion and the HMDA figure of $12.8 billion.[16] These results suggest that SMLA figures more accurately represent the overall size of the conventional multifamily mortgage market than does HMDA.

b. Urban Institute Statistical Model

In 1995, Urban Institute researchers developed a model to project multifamily origination volumes from 1992 forward, based on data from the 1991 Survey of Residential Finance.[17] They applied a statistical model of mortgage terminations based on Freddie Mac's experience from the mid-1970s to around 1990. While mortgage characteristics in 1990 are not wholly similar to the characteristics of these historical mortgages financed by Freddie Mac, nevertheless the prepayment propensities of contemporary mortgages may at least be approximated by the prepayment experience of these historical mortgages. The research methodology took account of the influence of interest rate fluctuations on prepayments of the historical mortgages; the projections assumed that prepayments are motivated mainly by property sales. Forecast total mortgage origination volume (including FHA) based on mortgages existing in 1991 were $40.8 billion for 1995. After removing FHA-insured loans totaling $2.3 billion, this method yields $38.5 billion as the estimated size of the conforming multifamily mortgage market. The latter figure is closer to the $36.7 billion POMS estimate and the $37.9 billion SMLA figure than to the $12.8 billion HMDA number.

Turning to 1997, the Urban Institute model generates a prediction of $47.2 billion. After removing $3.3 billion in FHA-insured originations, this generates an estimated conventional multifamily market figure of $43.9 billion, indicating that actual 1997 conventional origination volume may be closer to the $44.6 billion SMLA figure than to the $19.5 billion HMDA number cited earlier.

c. Alternative Approach

The increased availability of data on mortgages originated for the securitization market suggests yet another alternative method of deriving a rough estimate of the size of the conventional multifamily market as a further check on the accuracy of estimates derived from SMLA, HMDA, POMS, and the Urban Institute model. Total conventional multifamily volume can be estimated as the sum of (i) conventional nonagency (non-FHA, non-GSE) securitization; (ii) commercial bank originations less securitizations and secondary market sales or current-year and seasoned loans in portfolio; and (iii) GSE acquisitions. These data are from data published annually by *Inside MBS & ABS*, a trade newsletter; SMLA, and the loan-level data provided by the GSEs to the Department. Annual commercial bank securitization volume was calculated from a database published by *Commercial Mortgage Alert,* another trade newsletter.

Perhaps the most significant potential shortcoming of this approach is that nonagency securitization and GSE acquisitions include seasoned loans that are originated in years prior to those in which they are securitized or purchased on the secondary market. It is assumed here that seasoned loan transaction volume is relatively constant, in absolute volume, from year to year, which implies that the inclusion of seasoned loans will not bias the results. For example, some non-bank loans originated in 1996 will not be counted under the method proposed here until they are securitized, or purchased by a GSE, in 1997, but a similar volume of 1995 originations are not securitized or sold on the secondary market until 1996.[18] Hence the above technique generates a useful approximation to actual 1996 origination volume. A similar argument applies to other years.

It can also be argued that the SMLA commercial bank figure includes some originations by mortgage banks because of the double-counting issue discussed previously. It is assumed that these are removed when securitizations and secondary market sales are subtracted. This problem aside, the SMLA commercial bank figure appears to be derived using a new, and relatively carefully designed stratified survey, and therefore may be considered fairly reliable when used in the manner proposed here.

This method does not consider unsecuritized acquisitions by thrifts, life insurance companies, and other smaller entities in the multifamily mortgage market. In this regard, this method provides a conservative estimate of the size of the conventional multifamily market.

This method generates the following results for multifamily conventional origination volume for 1995–1997:

1995—$32.3 billion
1996—$37.2 billion
1997—$40.7 billion

The 1995 and 1997 estimates can be compared with the following estimates discussed previously.

[14] Amy D. Crews, Robert M. Dunsky, and James R. Follain, ''What We Know about Multifamily Mortgage Originations,'' report for the U.S. Department of Housing and Urban Development, October 1995.

[15] R^2, a measure of the degree to which the regression specification explains the variation in mortgage loan amount for observations where this field was populated, was 0.69 for this specification.

[16] FHA volume for 1995 is from *U.S. Housing Market Conditions,* 1998:4, Table 15.

[17] Robert Dunsky, James R. Follain, and Jan Ondrich, ''An Alternative Methodology to Estimate the Volume of Multifamily Mortgage Originations,'' report for the U.S. Department of Housing and Urban Development, October 1995.

[18] Loans originated by banks in 1996 and then sold on the secondary market in 1997 would count only toward the 1996 total. Such loans would count toward the 1996 total because these loans would be counted in 1996 commercial bank originations less sales per the SMLA, since they are not sold in 1996. In 1997, when they are sold on the secondary market, such loans would be added to either the GSE acquisition or nonagency securitization totals, but would be subtracted from commercial bank originations less loan sales per the SMLA. The net effect of adding such loans to the GSE/nonagency categories and subtracting them from the commercial bank category is that they would not be counted toward the 1997 total.

	1995 (billions)	1997 (billions)
Urban Institute	$38.5	$47.2
POMS	36.7	
SMLA figure	37.9	44.6
HMDA	12.8	19.5
Alternative Approach	32.3	40.7

The market estimates based on securitization data are thus somewhat lower that those derived from the POMS and SMLA surveys and by the Urban Institute model, but are considerably higher than those derived from HMDA.

In discussions with HUD staff, Fannie Mae has put the estimated size of the 1997 conforming multifamily market at approximately $35–$40 billion, based upon a combination of various data sources. This range is slightly more conservative than the $40.7 million figure derived here using securitization, GSE, and ABA data.

Preliminary indications suggest that multifamily origination volume in 1998 is unusually high. Unfortunately, 1998 SMLA data were not yet available as of the time of this writing. If 1997 SMLA data are used as a proxy for 1998 multifamily commercial bank originations, and added to nonagency securitization and GSE acquisitions (which were available), a figure of $59.2 billion can be derived. In written comments provided to HUD in early 1999, in contrast, Fannie Mae asserted that 1998 multifamily volume was approximately $38–43 billion. In a meeting with HUD staff, Freddie Mac staff provided an estimate of $40–50 billion. Given the uncertainty regarding 1998 origination activity as of the time of this writing, an adjusted figure of $50 billion may be used on an interim basis until further data becomes available.[19]

3. Projections for 2000 and Beyond

Considerations influencing future multifamily origination volume include interest rates, property values, and construction starts. Taking all of these factors into consideration, Fannie Mae forecasts of a 10 percent decrease in 1999 relative to 1998 followed by a 2 percent increase in 2000, included in comments provided to the Department, appear reasonable.[20]

If these projections regarding 1999 and year 2000 origination volume are applied to the Department's of $50 billion estimate of 1998 conventional multifamily origination volume, a projection of $46 billion in year 2000 volume can be derived. Alternatively, if 1998 origination volume is in the $38–43 billion range indicated by Fannie Mae, year 2000 conventional origination volume is expected to lie in the $35–$40 billion range. On the other hand, if 1998 origination volume reached $59 billion, the high end of the estimates discussed previously, year 2000 volume could be as high as $54 billion. Turning to the Urban Institute statistical model discussed earlier, total multifamily originations (including FHA) are projected to reach $54 billion in 2000. After removing $2.9 billion in anticipated FHA-insured originations, this leaves projected conventional volume of $51.1 billion.[21]

Taking all of these estimates into consideration, year 2000 multifamily conventional origination volume is likely to lie in the $40–$52 billion range, with an expected ''baseline'' value of $46 billion.

Average Loan Amounts. Another issue regarding the multifamily mortgage market concerns average loan amount per unit. This ratio is used in converting year-2000 estimates of conventional multifamily lending volume as measured in dollars into a number of units financed. For this purpose, the ratio of total UPB to total units financed, rather than UPB on a ''typical'' multifamily unit, is the appropriate measure.

HUD anticipates overall conventional multifamily loan amount per unit of $30,000 in the year 2000 based on analysis of newly-originated GSE and non-GSE multifamily mortgage loans. GSE figures on loan amount per unit can be obtained from GSE loan-level data provided to HUD. Non-GSE loan amount per unit figures are from HUD's analysis of recently-originated conventional non-GSE multifamily mortgages.[22] Combining these sources, and calculating a weighted average based on relative market shares yields an estimated UPB per unit of $25,167 in 1997 and $29,506 in 1998. The increase from 1997–1998 appears to be largely due to a significant increase in appraised value per unit, which may be associated with the relatively low interest rates prevailing in 1998.[23] Because interest rates are not expected to fall significantly from 1998 levels at the time of this writing, it appears reasonable to project that year-2000 conventional multifamily average loan amount will continue at the 1998 level of $30,000 under HUD's baseline projection of $46 billion for the year 2000. Under the lower projection of $40 billion, an average loan amount of $29,000 is assumed.

D. Single-Family Owner and Rental Mortgage Market Shares

1. Available Data

As explained later, HUD's market model will also use projections of mortgage originations on single-family (1–4 unit) properties. Current data combine mortgage originations for the three different types of single-family properties: owner-occupied, one-unit properties (SF-O); 2–4 unit rental properties (SF 2–4); and 1–4 unit rental properties owned by investors (SF-Investor). The fact that the goal percentages are much higher for the two rental categories argues strongly for disaggregating single-family mortgage originations by property type. This section discusses available data for estimating the relative size of the single-family rental mortgage market.

The RFS and HMDA are the two data sources for estimating the relative size of the single-family rental market. The RFS, based on mortgages originated between 1987 and 1991, provides mortgage origination estimates for each of the three single-family property types. HMDA divides newly-originated single-family mortgages into two property types:[24]

(1) Owner-occupied originations, which include both SF-O and SF 2–4.

(2) Non-owner-occupied mortgage originations, which include SF Investor.

The percentage distributions of mortgages from these data sources are as follows:

[19] The Urban Institute model predicts $50 billion for the *entire* 1998 multifamily market, including FHA.

[20] Multifamily interest rates increased in September, 1998 as part of a broader ''flight to quality'' precipitated by volatility in the world economy. While CMBS spreads were the most strongly affected, agency yield spreads also widened during this period. Further detail is provided in Appendix A. ''Expectations may have begun to adjust downward even before the recent troubles in the financial markets'' according to ''The Multifamily Outlook,'' Jack Goodman, *Urban Land,* November 1998. p. 92. The CMBS market, of which approximately 25 percent is multifamily, is expected by Morgan Stanley to fall from approximately $80 billion in 1998 to $50 billion in 1999 (''A Cloudy '99 for Subprime Lenders, HELs, CMBS,'' *Mortgage Backed Securities Letter,* January 4, 1999, p. 1). Donaldson, Lufkin & Jenrette anticipates a decrease from $76 billion to $55 billion (March Hochstein, ''Commercial Mortgage Bond Issuance Seen Falling,'' *American Banker,* December 22, 1998, p. 2). To the extent that multifamily origination volume falls in late 1999 associated with concerns regarding Y2K, the contraction in lending volume from 1998 to 1999 could exceed 10 percent. This possibility is taken into consideration here by providing a range of estimates for year 2000 origination volume as discussed below.

[21] Projected year 2000 FHA volume was calculated as the mean of 1997 and 1998 volume pursuant to discussions with staff in HUD's Housing Finance Analysis Division.

[22] Sample sizes on conventional non-GSE multifamily loans are 1,047 and 535 in 1997 and 1998, respectively.

[23] Commercial property values are inversely related to interest rates because a reduction in interest rates reduces the rate at which income streams are discounted.

[24] This ignores the HMDA loans with ''non-applicable'' for owner type.

	1997 HMDA (percent)			1987–91[1] RFS	HUD's 1995 Rule
	Purchase	Refinance	All		
SF-O	90.6	92.6	91.5	80.4	88.0
SF 2–4	(included above)			2.3	2.0
SF Investor	9.4	7.4	8.5	17.3	10.0
Total	100.0	100.0	100.0	100.0	100.0

[1] The year-by-year distributions from the RFS were not too different from the average distribution given in the text.

Because HMDA combines the first two categories, the comparisons between the data bases must necessarily focus on the SF investor category. According to HMDA, investors account for 9.4 percent of home purchase loans and 7.4 percent of refinance loans.[25] The RFS estimate of 17.3 percent is over twice HMDA's overall estimate of 8.5 percent. In its 1995 rule, HUD projected a 10.0 percent share for the SF investor group, only 1.5 percentage points higher than the 1997 HMDA figure. As discussed below, HUD's projection was probably quite conservative; however, given the uncertainty around the data, it is difficult to draw firm conclusions about the size of the single-family rental market.

2. Analysis of Investor Market Share

Blackley and Follain. During the 1995 rule-making, HUD asked the Urban Institute to analyze the differences between the RFS and HMDA investor shares and determine which was the more reasonable. The Urban Institute's analysis of this issue is contained in reports by Dixie Blackley and James Follain.[26] Blackley and Follain provide reasons why HMDA should be adjusted upward as well as reasons why the RFS should be adjusted downward. One reason for adjusting HMDA's investor share upward is that the investor share of mortgage originations as reported by HMDA is much lower than the investor share of the single-family rental stock as reported by the AHS.

Blackley and Follain also noted that the fact that investor loans prepay at a faster rate than other single-family loans suggests that the investor share of single-family mortgage originations should be higher not lower than the investor share of the single-family housing stock. Blackley and Follain (1995) conclude that ''this brings into question the investor share based upon HMDA data'' (page 15).

The RFS's investor share should be adjusted downward in part because the RFS assigns all vacant properties to the rental group, but some of these are likely intended for the owner market, especially among one-unit properties. Blackley and Follain's analysis of this issue suggests lowering the investor share from 17.3 percent to about 14–15 percent.

Finally, Blackley and Follain note that a conservative estimate of the SF investor share is advisable because of the difficulty of measuring the magnitudes of the various effects that they analyzed.[27] In their 1996 paper, they conclude that 12 percent is a reasonable estimate of the investor share of single-family mortgage originations.[28] Blackley and Follain caution that uncertainty exists around this estimate because of inadequate data.

3. Single-Family Market in Terms of Unit Shares

The market share estimates for the housing goals need to be expressed as percentages of units rather than as percentages of mortgages. Thus, it is necessary to compare unit-based distributions of the single-family mortgage market under the alternative estimates discussed so far. The mortgage-based distributions given above in Section D.1 were adjusted in two ways. First, the owner-occupied HMDA data were disaggregated between SF-O and SF 2–4 mortgages based on RFS data, which show that SF 2–4 mortgages represent approximately 2 percent of all single-family mortgages. Second, the resulting mortgage-based distributions were shifted to unit-based distributions by applying the unit-per-mortgage assumptions in HUD's proposed rule. HUD assumed 2.25 units per SF 2–4 property and 1.35 units per SF investor property; both figures were derived from the 1991 RFS.[29]

	1997 HMDA (percent)	1987–91 RFS (percent)	HUD's 1995 rule (percent)	Blackley/ Follain Alternative (percent)
SF–O	84.8	73.8	83.0	80.6
SF–2–4 Owner[1]	*1.9	2.1	1.9	1.9
SF 2–4 Renter	*2.4	2.7	2.4	2.3
SF Investor[1]	10.9	21.4	12.7	15.2
Total	100.0	100.0	100.0	100.0
SF-Rental	13.3	24.1	15.1	17.5

[1] Notice that the SF 2–4 category has been divided into its owner and renter subcomponents. This is easily done based on the assumption of 2.25 units per SF 2–4 mortgage. For each mortgage, one unit represents the owner occupant and 1.25 additional units represent renter occupants. The owner-occupant is included in the SF–O category in this Appendix. This is necessary because different data sources are used to estimate the owner's income and the affordability of the rental units. The income of owners of 2–4 properties are included in the borrower income data reported by HMDA. The AHS and POMS will be used to estimate the affordability of the rental units.

* Estimate

[25] The single-family owner percentages based on 1998 HMDA data are as follows: Purchase (91.0 percent), Refinance (94.5 percent), and All (93.2 percent). The higher ''All'' percent reflects the higher share of refinance mortgages during 1998.

[26] Dixie M. Blackley and James R. Follain, ''A Critique of the Methodology Used to Determine Affordable Housing Goals for the Government Sponsored Housing Enterprises,'' unpublished report prepared for Office of Policy Development and Research, Department of Housing and Urban Development, October 1995; and ''HUD's Market Share Methodology and its Housing Goals for the Government Sponsored Enterprises,'' unpublished paper, March 1996.

[27] For example, they note that discussions with some lenders suggest that because of higher mortgage rates on investor properties, some HMDA-reported owner-occupants may in fact be ''hidden'' investors; however, it would be difficult to quantify this effect. They also note that some properties may switch from owner to renter properties soon after the mortgage is originated. While such loans would be classified by HMDA as owner-occupied at the time of mortgage origination, they could be classified by the RFS as rental mortgages. Again, it would be difficult to quantify this effect given available data.

[28] Blackley and Follain (1996), p. 20.

[29] The unit-per-mortgage data from the 1991 RFS match closely the GSE purchase data for 1996 and 1997. Blackley and Follain show that an adjustment for vacant investor properties would raise the average units per mortgage to 1.4; however, this increase is so small that it has little effect on the overall market estimates.

Three points should be made about these data. First, notice that the ''SF-Rental'' row highlights the share of the single-family mortgage market accounted for by all rental units.

Second, notice that the rental categories represent a larger share of the unit-based market than they did of the mortgage-based market reported earlier. This, of course, follows directly from applying the loan-per-unit expansion factors.

Third, notice that the rental share under HMDA's unit-based distribution is again about one-half of the rental share under the RFS's distribution. The rental share in HUD's 1995 rule is slightly larger than that reported by HMDA. The rental share in the ''Blackley-Follain'' alternative is slightly above that in HUD's 1995 Rule.

4. Conclusions

This section has reviewed data and analyses related to determining the rental share of the single-family mortgage market. There are two main conclusions:

(1) While there is uncertainty concerning the relative size of this market, the projections made by HUD appear reasonable and, in fact, are below the estimate provided by Blackley and Follain.

(2) HMDA likely underestimates the single-family rental mortgage market. Thus, this part of the HMDA data are not considered reliable enough to use in computing the market shares for the housing goals. Various sensitivity analyses of the market shares for single-family rental properties are conducted in Sections F, G, and H. These analyses will show the effects on the overall market estimates of the different projections about the size of the single-family rental market.

E. HUD's Market Share Model

This section integrates findings from the previous two sections about the size of the multifamily mortgage market and the relative distribution of single-family owner and rental mortgages into a single model of the mortgage market. The section provides the basic equations for HUD's market share model and identifies the remaining parameters that must be estimated.

The output of this section is a unit-based distribution for the four property types discussed in Section B.[30] Sections F–H will apply goal percentages to this property distribution in order to determine the size of the mortgage market for each of the three housing goals.

1. Basic Equations for Determining Units Financed in the Mortgage Market

The model first estimates the number of dwelling units financed by conventional conforming mortgage originations for each of the four property types. It then determines each property type's share of the total number of dwelling units financed.

a. Single-Family Units

This section estimates the number of single-family units that will be financed in the conventional conforming market, where single-family units (SF–UNITS) are defined as:

SF–UNITS=SF – O+SF 2 – 4+SF – INVESTOR

First, the dollar volume of conventional conforming single-family mortgages (CCSFM$) is derived as follows:

(1) CCSFM$=CONF%*CONV%*SFORIG$

Where:

CONV%=conforming mortgage originations as a percent (measured in dollars) of conventional single-family originations; estimated to be 87%.[31]

CONF%=conventional mortgage originations as a percent of total mortgage originations; forecasted to 78% by industry and GSEs.[32]

SFORIG$=dollar volume of single-family one-to-four unit mortgages; $1,100 billion is used here as a starting assumption to reflect market conditions during the years 2000–2003.[33] Alternative assumptions will be examined later.[34]

Substituting these values into (1) yields an estimate for the conventional conforming market (CCSFM$) of $746 billion.

Second, the number of conventional conforming single-family mortgages (CCSFM#) is derived as follows:

(2) CCSFM#=CCSFM$/SFLOAN$

Where:

SFLOAN$=the average conventional conforming mortgage amount for single-family properties; estimated to be $100,000.[35]

Substituting this value into (2) yields an estimate of 7.46 million mortgages.

Third, the total number of single-family mortgages is divided among the three single-family property types. Using the 88/2/10 percentage distribution for single-family mortgages (see Section C), the following results are obtained:

(3a) SF – OM#=.88*CCSFM#=number of owner-occupied, one-unit mortgages=6.56 million.

(3b) SF–2–4M#=.02*CCSFM#=number of owner-occupied, two-to-four unit mortgages=.15 million.

(3c) SF–INVM#=.10*CCSFM#=number of one-to-four unit investor mortgages=.75 million.

Fourth, the number of dwelling units financed for the three single-family property types is derived as follows:

(4a) SF–O=SF–OM#+SF–2–4M#=number of owner-occupied dwelling units financed=6.72 million.

(4b) SF 2–4=1.25*SF–2–4M#=number of rental units in 2–4 properties where a owner occupies one of the units=.18 million.[36]

(4c) SF–INVESTOR=1.35* SF–INVM#=number of single-family investor dwelling units financed=1.01 million.

Summing equations 4a–4c gives 7.91 million for the projected number of newly-mortgaged single-family units (SF–UNITS).

b. Multifamily Units

The number of dwelling units financed by conventional conforming multifamily originations is:

(5) MF–UNITS=CCMFM$/MFLOAN$

Where:

CCMFM$=conventional conforming mortgage originations, which are assumed to be $46 billion as a starting point; as discussed in Section C, alternative estimates of the multifamily market will be included in the analysis.

[30] The property distribution reported in Section A is an example of the output of the market share model. Thus, this section completes Step 1 of the three-step procedure outlined in Section A.

[31] From MBA volume estimates, the conventional share of the 1–4 family market was between 86 and 88 percent of the market from 1993 to 1998, with a one-time low of 81 percent in 1994. Calculated from ''1–4 Family Mortgage Origination Volume'' tables in Mortgage Finance Review, Vol. 6, No. 4, p. 7, and Vol. 7, No. 1, p. 7, and from ''MBA Mortgage Finance Forecast,'' September 1999, at www.mbaa.org/marketkdata/forecasts/mffore0999.html.

[32] Data provided by Fannie Mae show that conforming loans have been about 78 percent of total conventional loans over the past few years.

[33] Single-family mortgage originations of $1,100 billion is $370 billion less than the record setting $1,470 billion in 1998 and $266 billion higher than the $834 billion in 1997. As discussed later, single-family originations could differ from $1,100 billion during the 2000–2003 period that the goals will be in effect. As recent experience shows, market projections often change. For example, $1,100 billion is similar to year-2000 projections by the Mortgage Bankers Association made in June, 1999. (*See Mortgage Finance Review,* Vol. 7, No. 2, ''Mortgage Finance Forecasts,'' p. 2.) However, more recently, MBA estimates for year 2000 volume have dropped to $952 billion (see MBA Mortgage Finance Forecast, September 1999). Section F will report the effects on the market estimates of alternative estimates of single-family mortgage originations. As also explained later, the important concept for deriving the goal-qualifying market shares is the relative importance of single-family versus multifamily mortgage originations (the ''mix effect'') rather than the total dollar volume of single-family originations considered in isolation.

[34] The model also requires an estimated refinance rate because purchase and refinance loans have different shares of goals-qualifying units. Over the past year, the MBA has estimated the year 2000 refinance rate to be 20, 30, and 38 percent for the total market (expressed in dollar terms), with 20 percent the latest estimate. The model uses a refinance rate of 40 percent for conforming conventional loans, which is consistent with the MBA's 30 percent estimate, since refinance rates are higher for the number of conventional conforming loans than for the total market expressed in dollar terms. The 40 percent refinance assumption (compared with the recent, lower MBA projections) results in conservative estimates of goals-qualifying units in the market, since the low-mod share of refinance units is lower than the low-mod share of purchase units. Sensitivity analyses for alternative refinance rates are presented in Sections F–H.

[35] The average 1997 loan amount is estimated at $92,844 for owner occupied units using 1997 HMDA metro average loan amounts for purchase and refinance loans, and then weighting by an assumed 40 percent refinance rate. A small adjustment is made to this figure to account for a small number of two-to-four and investor properties (see Section C above). This produces an average loan size of $91,544 for 1997, which is then inflated 3 percent a year for three years to arrive at an estimated $100,000 average loan size for 2000.

[36] Based on the RFS, there is an average of 2.25 housing units per mortgage for 2–4 properties. 1.25 is used here because one (i.e., the owner occupant) of the 2.25 units is allocated to the SF–O category. The RFS is also the source of the 1.35 used in (4c).

MFLOAN$=average loan amount per housing unit in multifamily properties=$30,000.[37]

Substituting these values into (5) yields a projection for MF–UNITS of 1.53 million.

c. Total Units Financed

The total number of dwelling units financed by the conventional conforming mortgage market (TOTAL) can be expressed in three useful ways:

(6a) TOTAL=SF–UNITS+MF–UNITS=9.44 million

(6b) TOTAL=SF–O+SF 2–4+SF–INVESTOR+MF–UNITS

(6c) TOTAL=SF–O+SF–RENTAL+MF–UNITS where SF–RENTAL equals SF–2–4 plus SF–INVESTOR.

2. Dwelling Unit Distributions by Property Type

The next step is to express the number of dwelling units financed for each property type as a percentage of the total number of units financed by conventional conforming mortgage originations.[38]

The projections used above in equations (1)–(6) produce the following distributions of financed units by property type:

	Percent share		Percent share
SF–O	71.1		
SF 2–4	2.0	SF–O	[1] 71.1
SF INVESTOR	10.7	SF–RENTER	12.7
MF–UNITS	16.2	MF–UNITS	16.2
Total	100.0		100.0

[1] Owners of 2–4 properties account for 1.6 percentage points of the 71.1 percent for SF–O.

Sections C and D discussed alternative projections for the volume of the multifamily originations and the investor share of single-family mortgages. The analysis in this appendix will consider three multifamily origination levels—$40 billion, $46 billion, and $52 billion—and three projections about the investor share of single-family mortgages—8 percent, 10 percent, and 12 percent. The middle values ($46 billion and 10 percent) are used in the above calculations and will be considered the ''baseline'' projections throughout the Appendix. However, HUD recognizes the uncertainty of projecting origination volume in markets such as multifamily; therefore, the analysis in Sections G–H will also consider market assumptions other than the baseline assumptions.

Table D.3 reports the unit-based distributions produced by HUD's market share model for different combinations of these projections. The effects of the different projections can best be seen by examining the owner category which varies by 7 percentage points, from a low of 67.2 percent (multifamily originations of $52 billion coupled with an investor mortgage share of 12 percent) to a high of 74.3 percent (multifamily originations of $40 billion coupled with an investor mortgage share of 8 percent). The owner share under the baseline projections ($46 billion and 10 percent) is 71.1 percent, which is approximately the same as the owner share (71.0 percent) in the baseline projection of HUD's 1995 Rule.

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[37] See Section C for a discussion of average multifamily loan amounts.

[38] The share of the mortgage market accounted for by owner occupants is (SF–O)/TOTAL; the share of the market accounted for by all single-family rental units is SF–RENTAL/TOTAL; and so on.

Table D.3

Distribution of Financed Dwelling Units by Property Type for Different Projections of Multifamily and Single-Family Investor Originations

Investor Share Percentage of Single-Family Mortgage Market	Size of Mulitfamily Market		
	$40 Billion	$46 Billion	$52 Billion
12 Percent			
Single-Family Owner-Occupied	70.3 %	68.6 %	67.2 %
Single-Family Rental	14.9	15.4	15.1
Multifamily	14.8	16.0	17.7
Total	100.0	100.0	100.0
10 Percent			
Single-Family Owner-Occupied	72.3 %	71.1 %	69.6 %
Single-Family Rental	12.8	12.7	12.3
Multifamily	14.8	16.2	18.1
Total	100.0	100.0	100.0
8 Percent			
Single-Family Owner-Occupied	74.3 %	73.1 %	71.6 %
Single-Family Rental	10.7	10.6	10.3
Multifamily	14.9	16.5	18.1
Total	100.0	100.0	100.0

Comparison with the RFS. The Residential Finance Survey is the only mortgage data source that provides unit-based property distributions similar to those reported in Table D.3. Based on RFS data for 1987 to 1991, HUD estimated that, of total dwelling units in properties financed by recently acquired conventional conforming mortgages, 56.5 percent were owner-occupied units, 17.9 percent were single-family rental units, and 25.6 percent were multifamily rental units.[39] Thus, the RFS presents a much lower owner share than does HUD's model. This difference is due mainly to the relatively high level of multifamily originations (relative to single-family originations) during the mid- to late-1980s, which is the period covered by the RFS.[40]

3. Sensitivity of Property Distributions to Changes in Other Model Parameters

The multifamily and single-family rental markets are not the only areas where some degree of uncertainty exists about their magnitudes. HUD examined the sensitivity of the property distributions given in Table D.3 to changes in several other model parameters. Most of these sensitivity analyses will be reported when discussing the market estimates for each of the housing goals. Suffice it to say here that any changes that reduce the owner category such as reducing the overall level of single-family origination activity or raising the per unit loan amounts for single-family mortgages tend to increase the market estimates for each of the housing goals. This occurs because the goal percentages for owner mortgages are lower than those for rental housing.

F. Size of the Conventional Conforming Mortgage Market Serving Low- and Moderate-Income Families

This section estimates the size of the low- and moderate-income market by applying low- and moderate-income percentages to the property shares given in Table D.3. This section essentially accomplishes Steps 2 and 3 of the three-step procedure discussed in Section B.

Technical issues and data adjustments related to the low- and moderate-income percentages for owners and renters are discussed in the first two subsections. Then, estimates of the size of the low- and moderate-income market are presented along with several sensitivity analyses. Based on these analyses, HUD concludes that 50–55 percent is a reasonable estimate of the mortgage market's low- and moderate-income share for the years (2000–2003) which the new goals will be in effect.

This rule proposes that the Low- and Moderate-Income Goal be established at 48 percent of eligible units financed in calendar year 2000, and 50 percent of eligible units financed in each of calendar years 2001–2003.

1. Low- and Moderate-Income Percentage for Single-Family Owner Mortgages

a. HMDA Data

The most important determinant of the low- and moderate-income share of the mortgage market is the income distribution of single-family borrowers. HMDA reports annual income data for families who live in metropolitan areas and purchase a home or refinance their existing mortgage.[41] Table D.4 gives the percentage of mortgages originated for low- and moderate-income families for the years 1992–1998. Data for home purchase and refinance loans are presented separately; the discussion will focus on home purchase loans because they typically account for the majority of all single-family owner mortgages. For each year, a low- and moderate-income percentage is also reported for the conforming market without loans originated by lenders that primarily originate manufactured home loans (discussed below).

[39] Restricting the RFS analysis to 1991 resulted in only minor changes to the market shares.

[40] Between 1987 and 1991, annual multifamily mortgage originations averaged $32 billion, representing 7.2 percent of conventional mortgage originations. In 1997, conventional multifamily originations stood at $40.7 billion but because of the increase in single-family originations since the late 1980s, the multifamily share of total originations had dropped to 4.7 percent.

[41] As noted earlier, HMDA data are expressed in terms of number of loans rather than number of units. In addition, HMDA data do not distinguish between owner-occupied one-unit properties and owner-occupied 2–4 properties. This is not a particular problem for this section's analysis of owner incomes.

Table D.4

Single-Family Owner-Occupied Mortgage Market by Borrower Income

	Home Purchase		Refinance	
	Conforming Market	Market W/O Mfg loans	Conforming Market	Market W/O Mfg loans
Very-Low-Income Share				
1992	8.7 %	7.6 %	4.5 %	4.2 %
1993	10.8	9.6	5.8	5.6
1994	11.9	10.7	11.0	10.2
1995	12.0	10.5	12.3	11.2
1996	12.7	10.8	13.0	12.2
1997	13.0	11.0	14.5	13.9
1998	13.3	11.4	11.3	11.1
Low- and-Moderate Income Share				
1992	34.4 %	33.0 %	25.2 %	24.8 %
1993	38.9	37.4	29.3	29.1
1994	41.8	40.3	39.9	38.9
1995	41.4	39.2	41.1	39.6
1996	42.2	39.4	42.7	41.6
1997	42.5	39.6	45.0	44.1
1998	43.0	40.4	39.7	39.4

Source: HMDA data for metropolitan areas. "Market without manufactured housing loans" excludes loans by lenders that primarily originate manufactured housing loans and loans less than $15,000.

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Table D.4 also reports similar data for very-low-income families (that is, families with incomes less than 60 percent of area median income). As discussed in Section H, very-low-income families are the major component of the special affordable mortgage market.

Two trends in the income data should be mentioned—one related to the market's funding of low-and moderate-income families since the 1995 Rule was written and the other related to the different borrower income distributions for refinance and home purchase mortgages.

Low-Mod Market Share Since 1995. As discussed in the 1995 Rule, the percentage of borrowers with less than area median income increased significantly between 1992 and 1994. Mortgages to low-mod borrowers increased from 34.4 percent of the home purchase market in 1992 to 41.8 percent of that market in 1994. Over the next four years (1995–98), the low-mod share of the home purchase market remained at a high level, averaging about 42 percent, or almost 40 percent if manufactured loans are excluded from the market totals. The share of the market accounted for by very-low-income borrowers followed a similar trend, increasing from 8.7 percent in 1992 to 11.9 percent in 1994 and then remaining at a high level through 1998. As discussed in Appendix A, this jump in low-income lending has been attributed to several factors, including: a favorable economy accompanied by historically low interest rates; the entry into the housing market of more diverse groups including non-traditional households (*e.g.*, singles), immigrants, and minority families seeking homeownership for the first time; and, affordable lending initiatives and outreach efforts on the part of the mortgage industry. Essentially, the affordable lending market is much stronger than it appeared to be when HUD wrote the 1995 Rule. At that time, there had been two years (1993 and 1994) of increasing affordable lending for lower-income borrowers. The four additional years of data for 1995–98 show more clearly the underlying strength of this market. While lending patterns could change with sharp changes in the economy, the fact that there has been six years (1993–98) of strong affordable lending suggests the market has changed in fundamental ways from the mortgage market of the early 1990s.

Refinance Mortgages. HUD's model for determining the size of the low-and moderate-income market assumes that low-mod borrowers will represent a smaller share of refinance mortgages than they do of home purchase mortgages. However, as shown in Table D.4, the income characteristics of borrowers refinancing mortgages seem to depend on the overall level of refinancing in the market. During the refinancing wave of 1992 and 1993, refinancing borrowers had much higher incomes than borrowers purchasing homes. For example, during 1993 low-and moderate-income borrowers accounted for 29.3 percent of refinance mortgages, compared to 38.9 percent of home purchase borrowers. In 1998, another period of high refinance activity, low-and moderate-income borrowers accounted for 39.7 percent of refinance loans, versus 43.0 percent of home purchase loans. But during the years (1995–97) characterized by lower levels of refinancing activity, the low-mod share for refinance mortgages was about the same as that for home purchase mortgages. In 1997, the low-mod share of refinance mortgages (45.0) was even higher than the low-mod share of home loans (42.5 percent).

The projection model assumes that refinancing will be 40 percent of the single-family mortgage market. However given the volatility of refinance rates from year to year, it is important to conduct sensitivity tests using different refinance rates.

b. Manufactured Housing Loans

The mortgage market definition in this appendix includes manufactured housing loans, which have become an important source of affordable housing and which the GSEs have started to purchase. Because the market estimates in HUD's 1995 Rule were adjusted to exclude manufactured housing loans, several tables in this appendix will show how the goals-qualifying shares of the single-family-owner market change depending on the treatment of manufactured housing loans. As explained later, the effect of manufactured housing on HUD's metropolitan area market estimate for each of the three housing goals is a modest one percentage point.

As discussed in Appendix A, the manufactured housing market has been increasing rapidly over the past few years, as sales volume has increased from $4.7 billion in 1991 to $16.3 billion in 1998. The affordability of manufactured homes for lower-income families is demonstrated by their average price of $41,000 in 1997, a fraction of the $176,000 for new homes and $154,000 for existing homes. Many households live in manufactured housing because they simply cannot afford site-built homes, for which the construction costs per square foot are much higher.

Data on the incomes of purchasers of manufactured homes is not readily available, but HMDA data on home loans made by 21 lenders that primarily originate manufactured home loans, discussed below, indicate that: [42]

(i) A very high percentage of these loans—76 percent in 1998—would qualify for the Low- and Moderate-Income Goal,

(ii) A substantial percentage of these loans—42 percent in 1998—would qualify for the Special Affordable Goal, and

(iii) Almost half of these loans—47 percent in 1998—would qualify for the Underserved Areas Goal.

Thus an enhanced presence in this market by the GSEs would benefit many lower-income families. It would also contribute to their presence in underserved rural areas, especially in the South.

To date the GSEs have played a minimal role in the manufactured home loan market, but both enterprises have expressed an interest in expanding their roles.[43] Except in structured transactions, the GSEs do not purchase manufactured housing loans under their seller/servicer guidelines unless they are real estate loans. That is, such homes must have a permanent foundation and the site must be either purchased as part of the transaction or already owned by the borrower. Industry trends toward more homes on private lots and on concrete foundations suggest that the percentage of manufactured homes that would qualify as real estate loans under GSE guidelines has grown in the past few years. There has also been a major shift from single-section homes to multisection homes, which contain two or three units which are joined together on site.

Although manufactured home loans cannot be identified in the HMDA data, HUD staff have identified 21 lenders that primarily originate manufactured home loans and likely account for most of these loans in the HMDA data for metropolitan areas. In Table D.4, the data presented under ''Conforming Market Without Manufactured Home Loans'' excludes loans originated by manufactured housing lenders, as well as loans less than $15,000. The lenders include companies such as Green Tree Financial; Vanderbilt Mortgage; Deutsche Financial Capital; Oakwood Acceptance Corporation; Allied Acceptance Corporation; Belgravia Financial Services; Ford Consumer Finance Company; and the CIT Group.[44]

c. American Housing Survey Data

The American Housing Survey also reports borrower income data similar to that reported in Table D.3.[45] The low- and moderate-income market shares from the AHS are as follows:

1985—27.0%
1987—32.0%
1989—34.0%
1991—36.0%
1993—33.0% (38.7% home purchase and 28.6% refinance)
1995—40.0% (38.5% home purchase and 43.2% refinance)

According to the AHS, 38.5 percent of those families surveyed during 1995 who had recently purchased their homes, and who obtained conventional mortgages below the

[42] Since most HMDA data are for loans in metropolitan areas and a substantial share of manufactured homes are located outside metropolitan areas, HMDA data may not accurately state the goals-qualifying shares for loans on manufactured homes in all areas.

[43] Freddie Mac, the Manufactured Housing Institute and the Low Income Housing Fund have formed an alliance to utilize manufactured housing along with permanent financing and secondary market involvement to bring affordable, attractive housing to underserved, low- and moderate-income urban neighborhoods. *Origination News.* (December 1998), p. 18.

[44] Randall M. Scheessele had developed a list of nine manufactured home lenders that has been used by several researchers in analyses of HMDA data prior to 1997. Scheessele recently developed the expanded list of 21 manufactured home loan lenders in his analysis of 1998 HMDA data. (See Randall M. Scheessele, *1998 HMDA Highlights, op. cit.*) In these appendices, the number of manufactured home loans deducted from the market totals for the years 1993 to 1997 are the same as reported by Scheessele (1999) in his Table D.2b.

[45] See Appendix D of the 1995 Rule for a detailed discussion of the AHS data and improvements that have been made to the survey to better measure borrower incomes and rent affordability.

conforming loan limit, had incomes below the area median; this compares with 39.3 percent based on 1995 HMDA data that excludes manufactured homes (as the AHS data do).

A longer-term perspective of the mortgage market can be gained by examining income data from the last six American Housing Surveys. During the earlier period between 1987 and 1991, the low- and moderate-income share increased from 27 percent to 36 percent, and averaged 32.3 percent. After remaining at a relatively low percentage (33.0 percent) during the heavy refinance year of 1993, the low- and moderate-income share rebounded to 40.0 percent in 1995. As noted earlier, this is about the same market share reported by HMDA data for 1995.

Since HMDA data cover over 80 percent of the single-family-owner mortgage market, and the American Housing Survey represents only a very small sample of this market, the HMDA data will be the major source of information on the characteristics of single-family property owners receiving mortgage financing. As discussed next, the American Housing Survey and the Property Owners and Managers Survey will be relied on for information about the rents and affordability of single-family and multifamily rental properties.

2. Low- and Moderate-Income Percentage for Renter Mortgages

The 1995 Rule relied on the American Housing Survey for a measure of the rent affordability of the single-family rental stock and the multifamily rental stock. As explained below, the AHS provides rent information for the stock of rental properties rather than for the flow of mortgages financing that stock. This section discusses a new survey, the Property Owners and Managers Survey (POMS), that provides information on the flow of mortgages financing rental properties. As discussed below, the AHS and POMS data provide very similar estimates of the low- and moderate-income share of the rental market.

a. American Housing Survey Data

The American Housing Survey does not include data on mortgages for rental properties; rather, it includes data on the characteristics of the existing rental housing stock and recently completed rental properties. Current data on the income of prospective or actual tenants has also not been readily available for rental properties. Where such income information is not available, FHEFSSA provides that the rent of a unit can be used to determine the affordability of that unit and whether it qualifies for the Low- and Moderate-Income Goal. A unit qualifies for the Low- and Moderate-Income Goal if the rent does not exceed 30 percent of the local area median income (with appropriate adjustments for family size as measured by the number of bedrooms). Thus, the GSEs' performance under the housing goals is measured in terms of the affordability of the rental dwelling units that are financed by mortgages that the GSEs purchase; the income of the occupants of these rental units is not considered in the calculation of goal performance. For this reason, it is appropriate to base estimates of market size on rent affordability data rather than on renter income data.

A rental unit is considered to be ''affordable'' to low- and moderate-income families, and thus qualifies for the Low- and Moderate-Income Goal, if that unit's rent is equal to or less than 30 percent of area median income. Table D.5 presents AHS data on the affordability of the rental housing stock for the survey years between 1985 and 1995. The 21995 AHS shows that for 1–4 unit unsubsidized single-family rental properties, 97 percent of all units and of units constructed in the preceding three years had gross rent (contract rent plus the cost of all utilities) less than or equal to 30 percent of area median income. For multifamily unsubsidized rental properties, the corresponding figure was 95 percent. The AHS data for 1989, 1991 and 1993 are similar to the 1995 data.

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Table D.5

Rental Market By Affordability of Dwelling Unit: American Housing Survey, 1985-1995

Units Affordable at 100% of Area Median Income	Recently Constructed Stock(a)	Stock 4 Years or Older	Existing Stock
1-4 Properties			
1985	75%	94%	93%
1987	80%	93%	92%
1989	90%	97%	97%
1991	92%	97%	97%
1993	92%	98%	98%
1995	89%	97%	97%
Multifamily (5+) Properties			
1985	88%	94%	93%
1987	86%	93%	92%
1989	88%	96%	95%
1991	88%	97%	96%
1993	88%	96%	96%
1995	89%	95%	95%
Units Affordable at 60% of Area Median Income			
1-4 Properties			
1985	8%	56%	54%
1987	17%	54%	52%
1989	24%	60%	59%
1991	26%	64%	63%
1993	37%	61%	61%
1995	30%	58%	57%
Multifamily (5+) Properties			
1985	14%	44%	41%
1987	18%	43%	40%
1989	13%	51%	47%
1991	18%	54%	51%
1993	12%	53%	51%
1995	20%	50%	49%

Source: American Housing Surveys, 1985, 1987, 1989, 1991, 1993, 1995.

a. Constructed in last 3 years.

b. Property Owners and Managers Survey (POMS)

During the 1995 rule-making, concern was expressed about using data on rents from the outstanding rental stock to proxy rents for newly mortgaged rental units.[46] At that time, HUD conducted an analysis of this issue using the Residential Finance Survey and concluded that the existing stock was an adequate proxy for the mortgage flow when rent affordability is defined in terms of less than 30 percent of area median income, which is the affordability definition for the Low- and Moderate-Income Goal. More specifically, that analysis suggested that 85 percent of single-family rental units and 90 percent of multifamily units are reasonable estimates for projecting the percentage of financed units affordable at the low- and moderate-income level.[47] HUD has investigated this issue further using the POMS.

POMS Methodology. The affordability of multifamily and single-family rental housing backing mortgages originated in 1993–1995 was calculated using internal Census Bureau files from the American Housing Survey-National Sample (AHS) from 1995 and the Property Owners and Managers Survey from 1995–1996. The POMS survey was conducted on the same units included in the AHS survey, and provides supplemental information such as the origination year of the mortgage loan, if any, recorded against the property included in the AHS survey. Monthly housing cost data (including rent and utilities), number of bedrooms, and metropolitan area (MSA) location data were obtained from the AHS file.

In cases where units in the AHS were not occupied, the AHS typically provides rents, either by obtaining this information from property owners or through the use of imputation techniques. Estimated monthly housing costs on vacant units were therefore calculated as the sum of AHS rent and utility costs estimated using utility allowances published by HUD as part of its regulation of the GSEs. Observations where neither monthly housing cost nor monthly rent was available were omitted, as were observations where MSA could not be determined. Units with no cash rent and subsidized housing units were also omitted. Because of the shortage of observations with 1995 originations, POMS data on year of mortgage origination were utilized to restrict the sample to properties mortgaged during 1993–1995. POMS weights were then applied to estimate population statistics. Affordability calculations were made using 1993–95 area median incomes calculated by HUD.

POMS Results. The rent affordability estimates from POMS of the affordability of newly-mortgaged rental properties are quite consistent with the AHS data reported in Table D.5 on the affordability of the rental stock. Ninety-six (96) percent of single-family rental properties with new mortgages between 1993 and 1995 were affordable to low- and moderate-income families, and 56 percent were affordable to very-low-income families. The corresponding percentages for newly-mortgaged multifamily properties are 96 percent and 51 percent, respectively. Thus, these percentages for newly-mortgaged properties from the POMS are similar to those from the AHS for the rental stock. As discussed in the next section, the baseline projection from HUD's market share model assumes that 90 percent of newly-mortgaged, single-family rental and multifamily units are affordable to low- and moderate-income families.

3. Size of the Low- and Moderate-Income Mortgage Market

This section provides estimates of the size of the low- and moderate-income mortgage market. Subsection 3.a provides some necessary background by comparing HUD's estimate made during the 1995 rule-making process with actual experience between 1995 and 1998. Subsection 3.b presents new estimates of the low-mod market while Subsection 3.c reports the sensitivity of the new estimates to changes in assumptions about economic and mortgage market conditions.

a. Comparison of Market Estimates with Actual Performance

The market share estimates that HUD made during 1995 can now be compared with actual market shares for 1995 to 1997. Projections for 1998 will be discussed in the next section. This discussion of the accuracy of HUD's past market estimates considers all three housing goals, since the explanations for the differences between the estimated and actual market shares are common across the three goals. HUD estimated the market for each housing goal for 1995–97, and obtained the following results:[48]

	Low-Mod (percent)	Special affordable (percent)	Underserved areas [1] (percent)
1995	56.8	28.4	32.9
1996	57.2	28.5	32.7
1997	57.8	29.0	33.7

[1] The underserved area market shares presented here are based on data for metropolitan areas; as discussed in the next section, accounting for non-metropolitan areas would likely raise the overall market share for this goal by as much as a percentage point.

HUD market estimates in 1995 were 48–52 percent for the Low- and Moderate-Income Goal, 20–23 percent for the Special Affordable Goal, and 25–28 percent for the Underserved Areas Goal. Thus, even the upper bound figures for the market share ranges in the 1995 Rule proved to be low- for the low-mod estimate, 52 percent versus 57–58 percent; for the special affordable estimate, 23 versus 28–29 percent, and for the underserved areas estimate, 28 percent versus 33 percent.

There are several factors explaining HUD's underestimate of the goals-qualifying market shares. The 1995–97 mortgage markets originated more affordable single-family mortgages than anticipated, mainly due to historically low interest rates and strong economic expansion. In 1997, for instance, almost 44 percent of all (home purchase and refinance) single-family-owner mortgages qualified for the Low- and Moderate-Income Goal, 16 percent qualified for the Special Affordable Goal, and 28 percent qualified for the Underserved Areas Goal.[49] HUD's 1995 estimates anticipated smaller shares of new

[46] Some even argued that data based on the recently completed stock would be a better proxy for mortgage flows. In the case of the Low- and Moderate-Income Goal, there is not a large difference between the affordability percentages for the recently constructed stock and those for the outstanding stock of rental properties. But this is not the case when affordability is defined at the very-low-income level. As shown in Table D.5, the recently completed stock houses substantially fewer very-low-income renters than does the existing stock. Because this issue is important for the Special Affordable Goal, it will be further analyzed in Section H when that goal is considered.

[47] In 1997, 75.6 percent of GSE purchases of single-family investor rental units and over 90 percent of their purchases of multifamily units qualified under the Low- and Moderate-Income Goal.

[48] The following goals-qualifying shares for 1995–97 are, of course, estimates themselves; even though information is available from HMDA and other data sources for most of the important model parameters, there are some areas where information is limited, which leads to a range of estimates rather than precise point estimates. For example, HUD had two sets of average per-unit loan amounts for multifamily properties. HUD's ''higher'' estimates ($24,698 in 1995, $25,268 in 1996, and $27,279 in 1997) are used in the text. HUD's ''lower'' estimates ($22,310 in 1995, $24,047 in 1996, and $25,167 in 1997) provided slightly higher market shares. For example, the 1997 figures under the ''lower'' estimates of per-unit multifamily loan amounts were as follows: Low- and Moderate-Income Goal (58.4 percent); Special Affordable Goal (29.5 percent; and Underserved Areas Goal (33.9 percent). The ''lower'' per-unit loan amounts result in a larger number of multifamily units in HUD's model, which leads to higher percentages of goals-qualifying loans in the overall market.

[49] The 1995–97 goals-qualifying percentages for single-family mortgages are based on HMDA data for all (both home purchase and refinance) mortgages. Thus, the implicit refinance rate is that reported by HMDA for conventional conforming mortgages.

mortgages being originated for low-income families and in their neighborhoods.[50] [51]

The financing of rental properties during 1995–97 was larger than anticipated. HUD's earlier estimates assumed a rental share of 29 percent, which was lower than the approximately 31 percent rental share for the years 1995–97. The underestimate for rental housing was due to a larger multifamily market ($32 billion for 1995, $37 billion for 1996, and $41 billion for 1997) than anticipated in the 1995 GSE Rule ($30 billion) and to lower per unit multifamily loan amounts than assumed in HUD's earlier model.[52]

B&C Mortgages. As discussed in Appendix A, the market for subprime mortgages has experienced rapid growth over the past 2–3 years. Comprehensive data for measuring the size of this market are not available. However, estimates by various industry observers suggest that the subprime market could have accounted for as much as 15 percent of all mortgages originated during 1997, which would have amounted to approximately $125 billion.[53] In terms of credit risk, this $125 billion includes a wide range of mortgage types. ''A-minus'' loans, which represented about half of the subprime market in 1997, make up the least risky category. The GSEs are involved in this market—for instance, Freddie Mac has initiated programs to purchase A-minus loans through its Loan Prospector system. The remaining categories (mainly ''B'' and ''C'' loans) experience much higher delinquency rates than A-minus loans.[54]

The effects of excluding B&C mortgages on the estimated market shares for goals-qualifying loans in 1997 can be derived by combining information from various sources. First, the $125 billion estimate for the subprime market was reduced by 15 percent to arrive at an estimate of $106 billion for subprime loans that were less than the conforming loan limit of $214,600 in 1997. This figure was reduced by one-half to arrive at an estimate of $53 billion for the conforming B&C market; with an average loan amount of $68,289 (obtained from HMDA data, as discussed below), the $53 billion represented approximately 776,000 B&C loans originated during 1997 under the conforming loan limit.

HMDA data was used to provide an estimate of the portion of these 776,000 B&C loans that would qualify for each of the housing goals. HMDA data does not identify subprime loans, much less divide them into their A-minus and B&C components. As explained in Appendix A, HUD staff have identified HMDA reporters that primarily originate subprime loans. The goals-qualifying percentages of the loans originated by these subprime lenders in 1997 were as follows: 59.3 percent qualified for the Low- and Moderate-Income Goal, 29.4 percent for the Special Affordable Goal, and 46.1 percent for the Underserved Areas Goal.[55] Applying the goals-qualifying percentages to the estimated B&C market total of 776,000 gives the following estimates of B&C loans that qualified for each of the housing goals in 1997: Low- and Moderate Income (460,000), Special Affordable (228,000), and Underserved Areas (358,000).

Adjusting HUD's model to exclude the B&C market involves subtracting the above four figures for the overall B&C market and for B&C loans that qualify for each of the three housing goals from the corresponding figures estimated by HUD for the total single-family and multifamily market inclusive of B&C loans. HUD's model estimates that 8,220,000 single-family and multifamily units were financed during 1997; of these, 4,751,000 (57.8 percent) qualified for the Low- and Moderate-Income Goal, 2,387,000 (29.0 percent) for the Special Affordable Goal, and 2,767,000 (33.7 percent) for the Underserved Areas Goal. Deducting the B&C market estimates produces the following adjusted market estimates: a total market of 7,444,000, of which 4,291,000 (57.6 percent) qualified for the Low- and Moderate-Income Goal, 2,159,000 (29.0 percent) for the Special Affordable Goal, and 2,409,000 (32.4 percent) for the Underserved Areas Goal.

As seen, the low-mod market share estimate exclusive of B&C loans (57.6 percent) is similar to the original market estimate (57.8 percent) and the corresponding special affordable market estimate (29.0 percent) is the same as the original estimate. This occurs because the B&C loans that were dropped from the analysis had similar low-mod and special affordable percentages as the overall (both single-family and multifamily) market. For example, the low-mod share of the B&C was projected to be 59.3 percent and HUD's market model projected the overall low-mod share to be 57.8 percent. Thus, dropping B&C

[50] HUD had based its earlier projections heavily on market trends between 1992 and 1994. During this period, low- and moderate-income borrowers accounted for only 38 percent of home purchase loans, which is consistent with an overall market share for the Low- and Moderate-Income Goal of 52 percent (see Table D.7 below), which was HUD's upper bound in the 1995 Rule. Based on the 1993 and 1994 mortgage markets, HUD's earlier estimates also assumed that refinance mortgages would have smaller shares of lower-income borrowers than home purchase loans; the experience during the 1995–1997 period was the reverse, with refinance loans having higher shares of lower-income borrowers than home purchase loans. For example, in 1997, 45 percent of refinancing borrowers had less-than-area-median incomes, compared with 42.5 percent of borrowers purchasing a home.

[51] The 1995–97 estimates also include the effects of small loans (less than $15,000) and manufactured housing loans which increase the market shares for metropolitan areas by approximately one percentage point. For example, assuming a constant mix of owner and rental properties, excluding these loans would reduce the goals-qualifying shares as follows: the Low- and Moderate-Income Goal by 1.4 percentage points, and the Special Affordable Goal and Underserved Areas Goals by one percentage point. However, dropping manufactured housing from the market totals would increase the rental share of the market, which would tend to lower these impact estimates. It should also be mentioned that manufactured housing in non-metropolitan areas is not included in HUD's analysis due to lack of data; including this segment of the market would tend to increase the goals-qualifying shares of the overall market. Thus, the analyses of manufactured housing reported above and throughout the text pertain only to manufactured housing loans in metropolitan areas, as measured by loans originated by the manufactured housing lenders identified by Scheessele, *op. cit.*

[52] The accuracy of the single-family portion of HUD's model can be tested using HMDA data. The number of single-family loans reported to HMDA for the years 1995 to 1997 can be compared with the corresponding number predicted by HUD's model. Single-family loans reported to HMDA during 1995 were 79 percent of the number of loans predicted by HUD's model; comparable percentages for 1996 and 1997 were 83 percent and 82 percent, respectively. Studies of the coverage of HMDA data conclude that HMDA covers approximately 85 percent of the conventional conforming market. (See Randall M. Scheessele, *HMDA Coverage of the Mortgage Market, op. cit.*) The fact that the HMDA data account for lower percentages of the single-family loans predicted by HUD's model suggests that HUD's model may be slightly overestimating the number of single-family loans during the 1995–97 period. The only caveat to this concerns manufactured housing in non-metropolitan areas. The average loan amount that HUD used in calculating the number of units financed from mortgage origination dollars did not include the effects of manufactured housing in non-metropolitan areas; thus, HUD's average loan amount is too high, which suggests that single-family-owner mortgages are underestimated. (Similarly, the goals-qualifying percentages in HUD's model are based on metropolitan area data and therefore do not include the effects of manufactured housing in non-metropolitan areas.)

[53] A 15 percent estimate for 1997 is reported by Michelle C. Hamecs and Michael Benedict, ''Mortgage Market Developments'', in *Housing Economics,* National Association of Home Builders, April 1998, pages 14–17. Hamecs and Benedict draw their estimate from a survey by *Inside B&C Lending,* an industry publication. A 12 percent estimate is reported in ''Subprime Products: Originators Still Say Subprime Is 'Wanted Dead or Alive' '' in *Secondary Marketing Executive,* August 1998, 34–38. Forest Pafenberg reports that subprime mortgages accounted for 10 percent of the conventional conforming market in 1997; see his article, ''The Changing Face of Mortgage Lending: The Subprime Market'', *Real Estate Outlook,* National Association of Realtors, March 1999, pages 6–7. Pafenberg draws his estimate from Inside Mortgage Capital, which used data from the Mortgage Information Corporation. The uncertainty about what these various estimates include should be emphasized; for example, they may include second mortgages and home equity loans as well as first mortgages, which are the focus of this analysis.

[54] Based on information from The Mortgage Information Corporation, Pafenberg reports the following serious delinquency rates (either 90 days past due or in foreclosure) for 1997 by type of subprime loan: 2.97 percent for A-minus; 6.31 percent for B; 9.10 percent for C; and 17.69 percent for D. The D category accounted for only 5 percent of subprime loans. Also see ''Subprime Mortgage Delinquencies Inch Higher, Prepayments Slow During Final Months of 1998'', *Inside MBS & ABS,* March 12, pages 8–11, where it is reported that fixed-rate A-minus loans have delinquency rates similar to high-LTV (over 95 percent) conventional conforming loans.

[55] These percentages are based on 42 subprime lenders identified by Randall M. Scheessele; slightly lower goals-qualifying percentages for 1997 (57.3 percent, 28.1 percent, and 44.7 percent, respectively) were obtained based on Scheessele's more recent list of subprime lenders. Given the similarity of the two sets of percentages, the analysis was not repeated using the more recent list. For further comparison between the two lists, see Randall M. Scheessele, *1998 HMDA Highlights, op. cit.* Not surprisingly, the goals-qualifying percentages for subprime lenders are much higher than the percentages (43.6 percent, 16.3 percent, and 27.8 percent, respectively) for the overall single-family conventional conforming market in 1997.

loans from the market totals does not change the overall low-mod share of the market appreciably.

The situation is different for the Underserved Areas Goal. Underserved areas account for 46.1 percent of the B&C loans, which is a higher percentage than the underserved area share of the overall market (33.7 percent). Thus, dropping the B&C loans leads to a reduction in the underserved areas market share of 1.3 percentage points, from 33.7 percent to 32.4 percent.[56]

Dropping B&C loans from HUD's model changes the mix between rental and owner units in the final market estimate. Based on assumptions about the size of the owner and rental markets for 1997, HUD's model calculates that single-family-owner units accounted for about 69.5 percent of total units financed during 1997. Dropping the B&C owner loans, as described above, reduces the owner percentage of the market by about three percentage points to 66.3 percent. Thus, another way of explaining why the goals-qualifying market shares are not affected so much by dropping B&C loans is that the rental share of the overall market increases as the B&C owner units are dropped from the market. Since rental units have very high goals-qualifying percentages, their increased importance in the market partially offsets the negative effects on the goals-qualifying shares of any reductions in B&C owner loans. In fact, this rental mix effect would come into play with any reduction in owner units from HUD's model.

There are caveats that should be mentioned concerning the above adjustments for the B&C market. The adjustment for B&C loans depends on several estimates relating to the 1997 mortgage market, derived from various sources. Different estimates of the size of the B&C market in 1997 or the goals-qualifying shares of the B&C market could lead to different estimates of the goals-qualifying shares for the overall market. The goals-qualifying shares of the B&C market were based on HMDA data for selected lenders that primarily originate subprime loans; since these lenders are likely originating both A-minus and B&C loans, the goals-qualifying percentages used here may not be accurately measuring the goals-qualifying percentages for only B&C loans. The above technique of dropping B&C loans also assumes that the coverage of B&C and non-B&C loans in HMDA's metropolitan area data is the same; however, it is likely that HMDA coverage of non-B&C loans is higher than its coverage of B&C loans.[57] Despite these caveats, it also appears that reasonably different estimates of the various market parameters would not likely change, in any significant way, the above estimates of the effects of excluding B&C loans in calculating the goals-qualifying shares of the market. As discussed below, HUD provides a range of estimates for the goals-qualifying market shares to account for uncertainty related to the various parameters included in its projection model for the mortgage market.

1998 Projections. As discussed earlier in Section C.2.c, there is particular uncertainty regarding multifamily origination activity for the year 1998 due to, among other things, HUD's SMLA data not yet being available. The discussion in Section C.2.c concluded that 1998 multifamily originations could have ranged from $50 to $60 billion. In this section, the 1998 goals-qualifying market shares are first estimated assuming $50 billion in multifamily originations, although it is important to recognize the uncertainty of this estimate. The high volume of single-family mortgages in 1998 increased the share of single-family-owner units to 73.1 percent, while single-family rental units comprised 13.0 percent, and multifamily units comprised a reduced 13.9 percent of the market. This shift toward single-family loans, combined with the higher level of single-family refinance activity in 1998, results in market shares for metropolitan areas that are slightly smaller than reported earlier for 1995–97: low-mod, 54.1 percent; special affordable, 26.0 percent; and underserved areas, 30.4 percent. While lower, these estimates remain higher than the market estimates that HUD made in 1995 (see earlier discussion for reasons).[58]

b. Market Estimates

This section provides HUD's estimates for the size of the low- and moderate-income mortgage market that will serve as a proxy for the four-year period (2000–2003) when the new housing goals will be in effect. Three alternative sets of projections about property shares and property low- and moderate-income percentages are given in Table D.6. Case 1 projections represent the baseline and intermediate case; it assumes that investors account for 10 percent of the single-family mortgage market. Case 2 assumes a lower investor share (8 percent) based on HMDA data and slightly more conservative low- and moderate-income percentages for single-family rental and multifamily properties (85 percent). Case 3 assumes a higher investor share (12 percent) consistent with Follain and Blackley's suggestions.

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[56] As discussed later, the underserved area share is probably a percentage point higher than this due to HUD's model not accounting for the high percentage of loans in underserved counties of non-metropolitan areas.

[57] Dropping B&C loans in the manner described in the text results in the goals-qualifying percentages for the non-B&C market being underestimated since HMDA coverage of B&C loans is less than that of non-B&C loans and since B&C loans have higher goals-qualifying shares than non-B&C loans. For instance, the low-mod shares of the market reported in Table D.4 underestimate (to an unknown extent) the low-mod shares of the market inclusive of B&C loans; so reducing the low-mod owner shares by dropping B&C loans in the manner described in the text would provide an underestimate of the low-mod share of the non-B&C owner market. A study of 1997 HMDA data in Durham County, North Carolina by the Coalition for Responsible Lending (CRL) found that loans by mortgage and finance companies are often not reported to HMDA. For a summary of this study, see ''Renewed Attack on Predatory Subprime Lenders'' in *Fair Lending/CRA Compass,* June 9, 1999.

[58] If B&C loans are excluded from the market (using the techniques discussed earlier), the market estimates fall slightly as follows: low-mod, 53.8 percent; special affordable, 25.8 percent; and underserved areas, 29.4 percent. In 1998, the conforming B&C market is estimated to be $65 billion, with an average loan amount of $77,796, representing an estimated 836,000 B&C conforming loans. The 1998 goals-qualifying percentages (low-mod, 58.0 percent; special affordable, 28.5 percent; and underserved areas, 44.7 percent) used to ''proxy'' the B&C market were similar to those reported earlier for 1997. As noted earlier, there is much uncertainty about the size of the B&C market.

Table D.6

Alternative Assumptions for Single-Family Rental and Multifamily Mortgage Shares

	Case 1	Case 2	Case 3
1. Single-Family Mortgage Shares			
Single-Family Owner-Ocuupied	88.0%	90.0%	85.6%
Single-Family 2-4	2.0%	2.0%	2.4%
Single-Family 1-4 Investor	10.0%	8.0%	12.0%
2. Units Per Single-Family Mortgage			
Single-Family 2-4	2.25	2.25	2.25
Single-Family 1-4 Investor	1.35	1.35	1.40
3. Multifamily Loan Per Unit	$30,000	$30,000	$30,000
4. Percentage Affordable at Area Median Income (AMI)			
Single-Family Rental	90.0%	85.0%	95.0%
Multifamily	90.0%	85.0%	95.0%
5. Percentage Underserved			
Single-Family Rental	42.5%	40.0%	45.0%
Multifamily	48.0%	46.0%	48.0%
6. Percent Affordable at 60% of AMI			
Single-Family Rental	50.0%	47.0%	53.0%
Multifamily	47.0%	44.0%	50.0%
7. Percentage Low-Income in Low-Income Areas:			
Single-Family Rental	8.0%	6.0%	8.0%
Multifamily	11.0%	10.0%	12.0%

Table D.7

Low- and Moderate-Income Mortgage Market: Sensitivity Analysis

Case 1 with Different Percentages for Single-Family Owner-Occupied's with Income Less than AMI:		Size of Multifamily Market		
		$40 Billion	$46 Billion	$52 Billion
Single-Family: [a]	43%	55.2 %	55.7 %	56.4 %
	42%	54.4	55.0	55.7
	41%	53.7	54.3	55.0
	40%	53.0	53.6	54.3
	39%	52.3	52.9	53.6
	38%	51.5	52.2	52.9
	37%	50.8	51.5	52.3
	36%	50.1	50.7	51.6
	35%	49.4	50.0	50.9
	34%	48.6	49.3	50.2
Single-Family:	40% with:			
	Case 1 (above)	53.0 %	53.6 %	54.3 %
	Case 2	50.7	51.2	51.9
	Case 3	55.8	56.5	57.3
Single-Family:	36% with:			
	Case 1 (above)	50.1 %	50.7 %	51.6 %
	Case 2	47.7	48.3	49.3
	Case 3	53.0	53.7	54.6

[a] These percentages are used for home purchase loans. Refinance loans were assumed to be 3 percentage points less for each alternative.

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Because single-family-owner units account for about 70 percent of all newly mortgaged dwelling units, the low- and moderate-income percentage for owners is the most important determinant of the total market estimate.[59] Thus, Table D.7 provides market estimates for different owner percentages as well as for different sizes of the multifamily market—the $46 billion projection bracketed by $40 and $52 billion. Several low-mod percentages of the owner market are given in Table D.7 to account for different perceptions about the low-mod share of that market. Essentially, HUD's approach throughout this appendix is to provide several sensitivity analyses to illustrate the effects of different views about the goals-qualifying share of the single-family-owner market on the goals-qualifying share of the overall mortgage market. This approach recognizes that there is some uncertainty in the data and that there can be different viewpoints about the various market definitions and other model parameters.

As shown in Table D.7, the market estimate is 54–56 percent if the owner percentage is at or above 40 percent (slightly less than its 1994–98 levels), and it is 53 percent if the owner percentage is 39 percent (its 1993 level). If the low- and moderate-income percentage for owners fell from its 1997–98 level of 43 percent to 36 percent, the overall market estimate would be approximately 51 percent. Thus, 51 percent is consistent with a rather significant decline in the low-mod share of the single-family home purchase market. Under HUD's baseline projections, the home purchase percentage can fall as low as 34 percent—about four-fifths of the 1997–98 level—and the low- and moderate-income market share would still be above 49 percent.

The volume of multifamily activity is also an important determinant of the size of the low- and moderate-income market. HUD is aware of the uncertainty surrounding projections of the multifamily market and consequently recognizes the need to conduct sensitivity analyses to determine the effects on the overall market estimate of different assumptions about the size of that market. As discussed in Section E.2, the baseline assumption of $46 billion in multifamily originations produces a rental mix of 28.9 percent, which is about the same as the baseline projection in HUD's 1995 Rule. Lowering the multifamily projection to $40 billion reduces the rental mix to 27.6 percent, which produces the set of overall low-mod market estimates that are reported in the first column of Table D.7. Compared with $46 billion, the $40 billion assumption reduces the overall low-mod market estimates by slightly over a half percentage point. For example, when the low-mod share of the owner market is 42 percent, the low-mod share of the overall market is 55.0 percent assuming $46 billion in multifamily originations but is 54.4 percent assuming $40 billion in multifamily originations.

The market estimates for Case 2 and Case 3 bracket those for Case 1. The smaller single-family rental market and lower low- and moderate-income percentages for rental properties result in the Case 2 estimates being almost two percentage points below the Case 1 estimates. Conversely, the higher percentages under Case 3 result in estimates of the low-mod market approximately three percentage points higher than the baseline estimates.

The various market estimates presented in Table D.7 are not all equally likely. Most of them equal or exceed 51 percent; in the baseline model, estimates below 51 percent would require the low-mod share of the single-family owner market for home purchase loans to drop to approximately 36 percent which would be over six percentage points lower than the 1993–98 average for the low-mod share of the home purchase market. With multifamily volume at $40 billion, the low-mod share of the owner market can fall to almost 36 percent before the average market share falls below 51 percent.

The upper bound (56 percent) of the low-mod estimates reported in Table D.7 for the baseline case is lower than the low-mod share of the market between 1995 and 1997. As reported above, HUD estimates that the low-mod market share during this period was 57–58 percent. There are two reasons the upper bound of 56 percent is lower than the recent, 1995–97 experience. First, the projected rental share of 29 percent is slightly lower than the rental share of 32 percent for the 1995–97 period; a smaller market share for rental units lowers the market share. Second, HUD's projections assume that refinancing borrowers will have higher incomes than borrowers purchasing a home (explained below). As Table D.4 shows, this was the reverse of the situation between 1995 and 1997 when refinancing borrowers had higher incomes than borrowers purchasing a home.[60] This fact, along with the larger single-family mix effect, resulted in the low-mod share of the market falling below the 1997 level of 57–58 percent.

B&C Loans. B&C loans can be deducted from HUD's low-mod market estimates using the same procedure described earlier. But before doing that, some comments about how HUD's projection model operates are in order. HUD's projection model assumes that the low-mod share of refinance loans will be three percentage points lower than the low-mod share of home purchase loans, even though there have been years recently (1995–97) when the low-mod share of refinance loans has been as high or higher than that for home purchase loans (see Table D.4).[61] Since B&C loans are primarily refinance loans, this assumption of a lower low-mod share for refinance loans partially adjusts for the effects of B&C loans, based on 1995–97 market conditions. For example, in Table D.7, the low-mod home purchase percentage of 43 percent, which reflects 1997 conditions, is combined with a low-mod refinance percentage of 40 percentage when, in fact, the low-mod refinance percentage in 1997 was 45 percent. Thus, by taking the 1992–98 average low-mod differential between home purchase and refinance loans, the projection model deviates from 1995–97 conditions in the single-family owner market.[62]

The effects of deducting the B&C loans from the projection model can be illustrated using the above example of a low-mod home purchase percentage of 43 percent and a low-mod refinance percentage of 40 percent; as Table D.7 shows, this translates into an overall low-mod market share of 55.7 percent. As in Section F.3.a, it is assumed that the subprime market accounts for 15 percent of all mortgages originated, which would be $144 billion based on $957 billion for the conventional market. This $144 billion estimate for the subprime market is reduced by 15 percent to arrive at $122 billion for subprime loans that will be less than the conforming loan limit. This figure is reduced by one-half to arrive at approximately $60 billion for the conforming B&C market; with an average loan amount of $75,043, the $60 billion represents 799,542 B&C loans projected to be originated under the conforming loan limit.[63]

Following the procedure discussed in Section F.3.a, the low-mod share of the market exclusive of B&C loans is estimated to be 55.4 percent, which is only slightly lower than the original estimate (55.7 percent).[64] As noted earlier, this occurs

[59] The percentages in Table D.7 refer to borrowers purchasing a home. In HUD's model, the low-mod share of refinancing borrowers is assumed to be three percentage points lower than the low-mod share of borrowers purchasing a home; three percentage points is the average differential between 1992 and 1998. Thus, the market share model with the 40 percent owner percentage in Table D.7 assumes that 40 percent of home purchase loans and 37 percent of refinance loans are originated for borrowers with low- and moderate-income. If the same low-mod percentage were used for both refinancing and home purchase borrowers, the overall market share for the Low- and Moderate-Income Goal would increase by 0.8 of a percentage point.

[60] On the other hand, in the heavy refinance year of 1998, refinancing borrowers had higher incomes than borrowers purchasing a home.

[61] The three percentage point differential is the average for the years 1992 to 1998 (see Table D.4).

[62] Rather, this approach reflects 1998 market conditions when the low-mod differential between home purchase and refinance loans was approximately three percentage points.

[63] The $75,043 is derived by adjusting the 1997 figure of $68,289 upward based on recent growth in the average loan amount for all loans. Also, it should be mentioned that one recent industry report suggests that the B&C part of the subprime market has fallen to 37 percent. See ''Retail Channel Surges in the Troubled '98 Market'' in *Inside B&C Lending,* March 25, 1999, page 3. If the 1998 average ($76,223) for the 200 subprime lenders had been adjusted upward, the projected year 2000 average would have been higher ($81,164), which would have reduced the projected number of B&C loans to 739,244.

[64] As before, 1997 HMDA data for the 42 lenders were used to provide an estimate of 59.3 percent for the portion of the B&C market that would qualify as low- and moderate-income; using the low-mod percentage (58.0 percent) for the larger, 200 sample of subprime lenders would have given similar results. Applying the 59.3 percentage to the estimated B&C market total of 799,542 gives an estimate of 474,128 B&C loans that would qualify for the Low- and Moderate-Income Goal. Adjusting HUD's model to exclude the B&C market involves subtracting the 799,542 B&C loans and the 474,128 B&C low-mod loans from the corresponding figures estimated by HUD for the total single-family and multifamily market inclusive of B&C loans. HUD's projection model estimates that 9,445,809 single-family and multifamily units will be financed and of these, 5,263,085 (55.7 percent as in Table D.7) will qualify for the Low- and Moderate-Income Goal. Deducting the B&C market estimates produces

because the B&C loans that were dropped from the analysis had similar low-mod percentages as the overall (both single-family and multifamily) market (59.3 percent and 55.7 percent, respectively). The impact of dropping B&C loans is larger when the overall market share for low-mod loans is smaller. As shown in Table D.7, a 38 percent low-mod share for single-family owners is associated with an overall low-mod share of 52.2 percent. In this case, dropping B&C loans would reduce the low-mod market share by almost one percentage point (0.7 percent) to 51.5 percent. Still, dropping B&C loans from the market totals does not change the overall low-mod share of the market appreciably.

Dropping B&C loans from HUD's projection model changes the mix between rental and owner units in the final market estimate; rental units accounted for 31.5 percent of total units after dropping B&C loans compared with 28.9 percent before dropping B&C loans. Since practically all rental units qualify for the low-mod goal, their increased importance in the market partially offsets the negative effects on the goals-qualifying shares of any reductions in B&C owner loans.

Section F.3.a discussed several caveats concerning the analysis of B&C loans. It is not clear what types of loans (e.g., first versus second mortgages) are included in the B&C market estimates. There is only limited data on the borrower characteristics of B&C loans and the extent to which these loans are included in HMDA is not clear. Still, the analysis of Table D.7 and the above analysis of the effects of dropping B&C loans from the market suggest that 50–55 percent is a reasonable range of estimates for the low- and moderate-income market for the years 2000–2003. This range covers markets without B&C loans and allows for market environments that would be much less affordable than recent market conditions. The next section presents additional analyses related to market volatility and affordability conditions.

c. Economic Conditions, Market Estimates, and the Feasibility of the Low- and Moderate-Income Housing Goal

During the 1995 rule-making, there was a concern that the market share estimates and the housing goals failed to recognize the volatility of housing markets and the existence of macroeconomic cycles. There was particular concern that the market shares and housing goals were based on a period of economic expansion accompanied by record low interest rates and high housing affordability. This section discusses these issues, noting that the Secretary can consider shifts in economic conditions when evaluating the performance of the GSEs on the goals, and noting further that the market share estimates can be examined in terms of less favorable market conditions than existed during the 1993 to 1998 period.

Volatility of Market. The starting point for HUD's estimates of market share is the projected $1,100 billion in single-family originations. Shifts in economic activity could obviously affect the degree to which this projection is borne out. Changing economic conditions can affect the validity of HUD's market estimates as well as the feasibility of the GSEs' accomplishing the housing goals.

One only has to recall the volatile nature of the mortgage market in the past few years to appreciate the uncertainty around projections of that market. Large swings in refinancing, consumers switching between adjustable-rate mortgages and fixed-rate mortgages, and increased first-time homebuyer activity due to record low interest rates, have all characterized the mortgage market during the nineties. These conditions are beyond the control of the GSEs but they would affect their performance on the housing goals. A mortgage market dominated by heavy refinancing on the part of middle-income homeowners would reduce the GSEs' ability to reach a specific target on the Low- and Moderate-Income Goal, for example. A jump in interest rates would reduce the availability of very-low-income mortgages for the GSEs to purchase. But on the other hand, the next few years may be highly favorable to achieving the goals because of the high refinancing activity in 1998 and anticipated in 1999. A period of low interest rates would sustain affordability levels without causing the rush to refinance seen earlier in 1993 and more recently in 1998. A high percentage of potential refinancers have already done so, and are less likely to do so again.

HUD conducted numerous sensitivity analyses of the market shares. For example, increasing the single-family mortgage origination projection by $200 billion, from $1,100 billion to $1,300 billion, would reduce the market share for the Low- and Moderate-Income Goal by approximately one percentage point, assuming the other baseline assumptions remain unchanged. This reduction in the low-mod share of the mortgage market share occurs because the rental share of newly-mortgaged units is reduced (from 28.9 percent to 27.1 percent).

HUD also examined potential changes in the market shares under two very different macroeconomic environments, one assuming a recession and one assuming a period of low interest rates and heavy refinancing. The recessionary environment was simulated using Fannie Mae's minimum projections of single-family mortgage originations ($880 billion) and multifamily originations ($35 billion) for the year 2000. The low- and moderate-income share of the home purchase market was reduced to 34 percent, or 8.5 percentage points lower than its 1997 share.[65] Under these rather severe conditions, the overall market share for the Low- and Moderate-Income Goal would decline to 49 percent.

The heavy refinance environment was simulated assuming that the single-family origination market increased to $1,650 billion (compared with HUD's baseline of $1,100 billion) and that the multifamily market increased to $52 billion (compared with HUD's baseline of $46 billion). The relatively high level of single-family originations increases the owner share of newly-mortgaged dwelling units from 71 percent under HUD's baseline model to 74 percent in the simulated heavy refinance environment. Refinances were assumed to account for 60 percent of all single-family mortgage originations. If low- and moderate-income borrowers accounted for 40 percent of borrowers purchasing a home but only 36 percent of refinancing borrowers, then the market share for the Low- and Moderate-Income Goal would be 51 percent. If the first two percentages were reduced to 39 percent and 32 percent, respectively, then the market share for the Low- and Moderate-Income Goal would fall to 49 percent. However, if the refinance market resembled 1998 conditions, the low-mod share would be 54 percent, as reported earlier.

Finally, HUD simulated the specific scenario based on the MBA's most recent market estimate of $950 billion and a refinance rate of 20 percent. In this case, assuming a low- mod home purchase percentage of 40, the overall low-mod market share was 54.9 percent, assuming $46 billion in multifamily loans, and 54.3 percent, assuming $40 billion in multifamily loans.

Feasibility Determination. As stated in the 1995 Rule, HUD is well aware of the volatility of mortgage markets and the possible impacts on the GSEs' ability to meet the housing goals. FHEFSSA allows for changing market conditions.[66] If HUD has set a goal for a given year and market conditions change dramatically during or prior to the year, making it infeasible for the GSE to attain the goal, HUD must determine ''whether (taking into consideration market and economic conditions and the financial condition of the enterprise) the achievement of the housing goal was or is feasible.'' This provision of FHEFSSA clearly allows for a finding by HUD that a goal was not feasible due to market conditions, and no subsequent actions would be taken. As HUD noted in the 1995 GSE Rule, it does not set the housing goals so that they can be met even under the worst of circumstances. Rather, as explained above, HUD has conducted numerous sensitivity analyses for economic environments much more adverse than has existed in recent years. If macroeconomic conditions change even more dramatically, the levels of the goals can be revised to reflect the changed conditions. FHEFSSA and HUD recognize that conditions could change in ways that require revised expectations.

Affordability Conditions and Market Estimates. The market share estimates rely on 1992–1998 HMDA data for the percentage of low- and moderate-income borrowers. As discussed in Appendix A, record low interest rates, a more diverse socioeconomic group of households seeking homeownership, and affordability initiatives of the private sector have encouraged first-time buyers and low-income borrowers to enter the market during the six-year period between 1993 and 1998.

the following adjusted market estimates: a total market of 8,646,268 of which 4,788,957 (55.4 percent) will qualify for the Low- and Moderate-Income Goal.

[65] Refinance mortgages were assumed to account for 15 percent of all single-family originations; 31 percent of refinancing borrowers were assumed to have less-than-area-median incomes, which is 14 percentage points below the 1997 level. The average per unit multifamily loan amount was assumed to be $29,000.

[66] Section 1336(b)(3)(A).

A significant increase in interest rates over their 1993–98 levels would reduce the presence of low-income families in the mortgage market and the availability of low-income mortgages for purchase by the GSEs. As discussed above, the 50–55 percent range for the low-mod market share covers economic and housing market conditions less favorable than recent conditions of low interest rates and economic expansion. The low-mod share of the single-family home purchase market could fall to 34 percent, which is over nine percentage points lower than its 1998 level of about 43 percent, before the baseline market share for the Low- and Moderate-Income Goal would fall below 50 percent.

d. Conclusions About the Size of Low- and Moderate-Income Market

Based on the above findings as well as numerous sensitivity analyses, HUD concludes that 50–55 percent is a reasonable range of estimates of the mortgage market's low- and moderate-income share for the year 2000 and beyond. This range covers much more adverse market conditions than have existed recently, allows for different assumptions about the multifamily market, and excludes the effects of B&C loans. HUD recognizes that shifts in economic conditions could increase or decrease the size of the low- and moderate-income market during that period.

G. Size of the Conventional Conforming Market Serving Central Cities, Rural Areas, and Other Underserved Areas

The following discussion presents estimates of the size of the conventional conforming market for the Central City, Rural Areas, and other Underserved Areas Goal; this housing goal will also be referred to as the Underserved Areas Goal or the Geographically-Targeted Goal. The first two sections focus on underserved census tracts in metropolitan areas. Section 1 presents underserved area percentages for different property types while Section 2 presents market estimates for metropolitan areas. Section 3 discusses B&C loans and rural areas.

This rule proposes that the Central Cities, Rural Areas, and other Underserved Areas Goal for the years 2000 and thereafter be set at 29 percent of eligible units financed in calendar year 2000, and 31 percent of eligible units financed in each of calendar years 2001–2003.

1. Geographically-Targeted Goal Shares by Property Type

For purposes of the Geographically-Targeted Goal, underserved areas in metropolitan areas are defined as census tracts with:

(a) Tract median income at or below 90 percent of the MSA median income; or

(b) A minority composition equal to 30 percent or more and a tract median income no more than 120 percent of MSA median income.

Owner Mortgages. The first set of numbers in Table D.8 are the percentages of single-family-owner mortgages that financed properties located in underserved census tracts of metropolitan areas between 1992 and 1998. In 1997 and 1998, approximately 25 percent of home purchase loans financed properties located in these areas; this represents an increase from 22 percent in 1992 and 1993. In some years, refinance loans are even more likely than home purchase loans to finance properties located in underserved census tracts. Between 1994 and 1997, 28.5 percent of refinance loans were for properties in underserved areas, compared to 25.1 percent of home purchase loans.[67] In the heavy refinance year of 1998, underserved areas accounted for about 25 percent of both refinance and home purchase loans.

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[67] As shown in Table D.8, excluding loans less than $15,000 and manufactured home loans reduces the 1997 underserved area percentage by 1.2 percentage points for all single-family-owner loans from 27.8 to 26.6 percent. Dropping only small loans reduces the underserved areas share of the metropolitan market by 0.4 and dropping manufactured loans (above $15,0000) reduces the market by 0.8.

Table D.8

Underserved Area Mortgage Market In Metropolitan Areas: 1993-1998 HMDA Data

Single-Family Owner-Occupied	Purchase		Refinance		Total	
1992	22.2%	(21.5)	20.1%	(19.9)	20.8	(20.4)
1993	21.9	(21.1)	19.5	(19.4)	20.2	(19.9)
1994	24.4	(23.5)	27.5	(26.7)	25.5	(24.9)
1995	25.5	(24.2)	29.3	(28.1)	26.9	(25.6)
1996	25.0	(23.1)	28.7	(27.9)	26.7	(25.3)
1997	25.2	(23.3)	30.8	(30.1)	27.8	(26.6)
1998	24.6	(22.8)	24.9	(24.5)	24.8	(23.9)
Non-Owner						
1992						42.4
1993		39.3		41.1		40.4
1994		39.6		46.7		43.0
1995		40.1		50.1		43.7
1996		39.7		48.8		43.5
1997		40.5		51.2		45.0
1998		40.3		46.5		43.6
Multifamily[1]						
1992						50.2
1993						47.1
1994						51.0
1995						47.8
1996						48.5
1997						48.0
1998						47.0

Source: HMDA data for metropolitan areas. Numbers in parantheses exclude loans less than $15,000 and loans from lenders that primarily originate manufactured housing home loans. The reductions in the refinance percentages are mainly due to excluding loans less than $15,000, as there are few manufactured housing refinance loans.

[1] A purchase/refinance breakdown is not available for multifamily.

Since the 1995 Rule was written, the single-family-owner market in underserved areas has remained strong, similar to the low- and moderate-income market discussed in Section F. Over the past five years, the underserved area share of the metropolitan mortgage market has leveled off at 25–28 percent, considering both home purchase and refinance loans. This is higher than the 23 percent average for the 1992–94 period, which was the period that HUD was considering when writing the 1995 Rule. As discussed earlier, economic conditions could change and reduce the size of the underserved areas market; however, that market appears to have shifted to a higher level over the past five years.

Renter Mortgages. The second and third sets of numbers in Table D.8 are the underserved area percentages for single-family rental mortgages and multifamily mortgages, respectively. Based on HMDA data for single-family, non-owner-occupied (investor) loans, the underserved area share of newly-mortgaged single-family rental units has been in the 43–45 percent range over the past five years. HMDA data also show that about half of newly-mortgaged multifamily rental units are located in underserved areas.

2. Market Estimates for Underserved Areas in Metropolitan Areas

In the 1995 GSE Rule, HUD estimated that the market share for underserved areas would be between 25 and 28 percent. This estimate turned out to be below market experience, as underserved areas accounted for approximately 33 percent of all mortgages originated in metropolitan areas between 1995 and 1997 and for 30 percent in 1998 (see Section F.3.a above).[68]

Table D.9 reports HUD's estimates of the market share for underserved areas based on the projection model discussed earlier.[69] After presenting these estimates, which are based mainly on HMDA data for metropolitan areas, the effects of dropping B&C loans and including non-metropolitan areas will be discussed.

[68] As mentioned earlier, dropping B&C loans reduces the underserved area estimate for 1997 from 33.7 percent to 32.4 percent. The main reason for HUD's underestimate in 1995 was not anticipating the high percentages of single-family-owner mortgages that would be originated in underserved areas. During the 1995–97 period, about 27 percent of single-family-owner mortgages financed properties in underserved areas; this compares with 24 percent for the 1992–94 period which was the basis for HUD's earlier analysis. There are other reasons the underserved area market shares for 1995 to 1997 were higher than HUD's 25–28 percent estimate. As discussed earlier, rental properties accounted for a larger share (31 percent) of the market during this period than assumed (29 percent) in HUD's 1995 model. Single-family rental and multifamily mortgages originated during this period were also more likely to finance properties located in underserved areas than assumed in HUD's earlier model. In 1997, 45 percent of single-family rental mortgages and 48 percent of multifamily mortgages financed properties in underserved areas, both figures larger than HUD's assumptions (37.5 percent and 42.5 percent, respectively) in its earlier model. Even in the heavy refinance year of 1998, the underserved areas market share (30 percent) was higher than projected by HUD during the 1995 rule-making process.

[69] Table D.9 presents estimates for the same combinations of projections used to analyze the Low- and Moderate-Income Goal. Table D.6 in Section F.3 defines Cases 1, 2, and 3; Case 1 (the baseline) projects a 42.5 percent share for single-family rentals and a 48 percent share for multifamily properties while the more conservative Case 2 projects 40 percent and 46 percent, respectively.

Table D.9

Underserved Area Market Estimates For Metropolitan Areas: Sensitivity Analysis

Case 1 with Different Underserved Areas Percentages for Single-Family Owner-Occupied's:		Size of Multifamily Market		
		$40 Billion	$46 Billion	$52 Billion
Single-Family Owner-Occupied: [a]	28%	32.8 %	33.1 %	33.4 %
	27%	32.1	32.4	32.7
	26%	31.4	31.7	32.0
	25%	30.7	30.9	31.3
	24%	29.9	30.2	30.6
	23%	29.2	29.5	29.9
	22%	28.5	28.8	29.2
	21%	27.8	28.1	28.5
	20%	27.0	27.4	27.8
	19%	25.8	26.7	27.1
	18%	25.6	26.0	26.4
Single-Family Owner-Occupied:	25% with:			
	Case 1 (above)	30.7 %	30.9 %	31.3 %
	Case 2	29.7	30.0	30.3
	Case 3	31.5	31.8	32.1
Single-Family Owner-Occupied:	22% with:			
	Case 1 (above)	28.5 %	28.8 %	29.2 %
	Case 2	27.5	27.8	28.2
	Case 3	29.4	29.7	30.1

[a] These percentages are assumed to be the overall (both home purchase and refinance) percentages of single-family owner mortgages in underserved census tracts.

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The percentage of single-family-owner mortgages financing properties in underserved areas is the most important determinant of the overall market share for this goal. Therefore, Table D.9 reports market shares for different single-family-owner percentages ranging from 28 percent (1997 HMDA) to 20 percent (1993 HMDA) to 18 percent. If the single-family-owner percentage for underserved areas is at its 1994–98 HMDA average of 26 percent, the market share estimate is almost 32 percent. The overall market share for underserved areas peaks at 33 percent when the single-family-owner percentage is at its 1997 figure of 28 percent. Most of the estimated market shares for the owner percentages that are slightly below recent experience are in the 30–31 percent range. In the baseline case, the single-family-owner percentage can go as low as 23 percent, which is over 3 percentage points lower than the 1994–98 HMDA average, and the estimated market share for underserved areas remains almost 30 percent.[70]

Unlike the Low- and Moderate-Income Goal, the market estimates differ only slightly as one moves from Case 1 to Case 3 and from $40 billion to $52 billion in the size of the multifamily market. For example, reducing the assumed volume to $40 billion reduces the overall market projection for underserved areas by only about 0.3 percentage points. This is because the underserved area differentials between owner and rental properties are not as large as the low- and moderate-income differentials reported earlier. Several additional sensitivity analyses were conducted. For example, adding (deducting) $200 billion to the $1,100 billion single-family originations would reduce (increase) the underserved area market share by about 0.7 (1.0) percent, assuming there were no other changes. The MBA estimated in September 1999 that year 2000 single-family mortgage volume would be about $950 billion, with a refinance rate of 20 percent. With these assumptions and a single-family owner underserved area percentage of 25 percent, the overall market share for underserved units is 31.4 percent if multifamily loans total $46 billion, and 31.1 percent if multifamily loans total $40 billion.

3. Adjustments: B&C Loans and the Rural Underserved Area Market

B&C Loans. The procedure for dropping B&C loans from the projections is the same as described in Section F.3.b for the Low- and Moderate-Income Goal. The underserved area percentage for B&C loans is 46.1 percent, which is much higher than the projected percentage for the overall market (slightly over 30 percent as indicated in Table D.9). Thus, dropping B&C loans will reduce the overall market estimates. Consider in Table D.9, the case of a single-family-owner percentage of 28 percent, which yields an overall market estimate for underserved areas of 33.1 percent. Dropping B&C loans from the projection model reduces the underserved areas market share by 1.2 percentage points to 31.9.

Non-metropolitan Areas. Underserved rural areas are non-metropolitan counties with:

(a) County median income at or below 95 percent of the greater of statewide non-metropolitan median income or nationwide non-metropolitan income; or

(b) A minority composition equal to 30 percent or more and a county median income no more that 120 percent of statewide non-metropolitan median income.

HMDA does not provide mortgage data for non-metropolitan counties, which makes it impossible to estimate the size of the mortgage market in rural areas. However, all indicators suggest that underserved counties in non-metropolitan areas comprise a larger share of the non-metropolitan mortgage market than the underserved census tracts in metropolitan areas comprise of the metropolitan mortgage market. For instance, underserved counties within rural areas include 54 percent of non-metropolitan homeowners; on the other hand, underserved census tracts in metropolitan areas account for only 34 percent of metropolitan homeowners.

In 1997, 36 percent of the GSE's total purchases in non-metropolitan areas were in underserved counties while 27 percent of their purchases in metropolitan areas were in underserved census tracts. These figures also suggest the market share for underserved counties in rural areas is higher than the market share for underserved census tracts in metropolitan areas. Thus, HUD's use of the metropolitan estimate to proxy the overall market for this goal, including rural areas, is conservative. If mortgage data for non-metropolitan areas were available, the estimated market share for the Underserved Areas Goal could be as much as one percentage point higher.[71]

The estimates presented in Table D.9 and this section's analysis of dropping B&C loans and including non-metropolitan areas suggest that 29–32 percent is a reasonable range for the market estimate for underserved areas based on the projection model described earlier. This range incorporates market conditions that are more adverse than have existed recently and it excludes B&C loans from the market estimates.

4. Conclusions

Based on the above findings as well as numerous sensitivity analyses, HUD concludes that 29–32 percent is a reasonable estimate of mortgage market originations that would qualify toward achievement of the Geographically Targeted Goal if purchased by a GSE. HUD recognizes that shifts in economic and housing market conditions could affect the size of this market; however, the market estimate allows for the possibility that adverse economic conditions can make housing less affordable than it has been in the last few years. In addition, the market estimate incorporates a range of assumptions about the size of the multifamily market.

H. Size of the Conventional Conforming Market for the Special Affordable Housing Goal

This section presents estimates of the conventional conforming mortgage market for the Special Affordable Housing Goal. The special affordable market consists of owner and rental dwelling units which are occupied by, or affordable to: (a) very-low-income families; *or* (b) low-income families in low-income census tracts; *or* (c) low-income families in multifamily projects that meet minimum income thresholds patterned on the low-income housing tax credit (LIHTC).[72] HUD estimates that the special affordable market is 23–26 percent of the conventional conforming market.

HUD is proposing that the annual goal for mortgage purchases qualifying under the Special Affordable Housing Goal be 18 percent of eligible units financed in calendar year 2000, and 20 percent of eligible units financed in each of calendar years 2001–2003. This proposed rule further provides that of the total mortgage purchases counted toward the Special Affordable Housing Goal, each GSE must annually purchase multifamily mortgages in an amount equal to at least 0.9 percent of the dollar volume of combined (single family and multifamily) 1998 mortgage purchases in each of calendar year 2000, and 1.0 percent in each of calendar years 2001–2003. This implies the following thresholds for the two GSEs:[73]

	2000 (in billions)	2001–2003 (in billions)
Fannie Mae	$3.31	$3.68
Freddie Mac	2.46	2.73

Section F described HUD's methodology for estimating the size of the low- and moderate-income market. Essentially the same methodology is employed here except that the focus is on the very-low-income market (0–60 percent of Area Median Income) and that portion of the low-income market (60–80 percent of Area Median Income) that is located in low-income census tracts. Data are not available to estimate the number of renters with incomes between 60 and 80 percent of Area Median Income who live in projects that meet the tax credit thresholds. Thus, this part of the Special Affordable Housing Goal is not included in the market estimate.

[70] The recession scenario described in Section F.3.c assumed that the underserved area percentage for single-family-owner mortgages was 21 percent or almost seven percentage points lower than its 1997 value. In this case, the overall market share for underserved areas declines to 28 percent.

[71] Assuming that non-metropolitan areas account for 15 percent of all single-family-owner mortgages and recalling that the projected single-family-owner market for the year 2000 accounts for 71 percent of newly-mortgaged dwelling units, then the underserved area differential of 9 percent in the GSE purchase data would raise the overall market estimate by 0.96 of a percentage point (9 times 0.15 times 0.71). Of course, the market differential may not be the same as that reflected in the GSE data.

[72] There are two LIHTC thresholds: at least 20 percent of the units are affordable at 50 percent of AMI or at least 40 percent of the units are affordable at 60 percent of AMI.

[73] HUD has determined that the total dollar volume of the GSEs' combined (single and multifamily) mortgage purchases in 1998, measured in unpaid principal balance at acquisition, was as follows: Fannie Mae $367,589 million; Freddie Mac $273,231 million.

1. Special Affordable Shares by Property Type

The basic approach involves estimating for each property type the share of dwelling units financed by mortgages in a particular year that are occupied by very-low-income families or by low-income families living in low-income areas. HUD has combined mortgage information from HMDA, the American Housing Survey, and the Property Owners and Managers Survey in order to estimate these special affordable shares.

a. Special Affordable Owner Percentages

The percentage of single-family-owners that qualify for the Special Affordable Goal is reported in Table D.10. Table D.10 also reports data for the two components of the Special Affordable Goal—very-low-income borrowers and low-income borrowers living in low-income census tracts. HMDA data show that special affordable borrowers accounted for 15.3 percent of all conforming home purchase loans between 1996 and 1998. The special affordable share of the market has followed a pattern similar to that discussed earlier for the low-mod share of the market. The percentage of special affordable borrowers increased significantly between 1992 and 1994, from 10.4 percent of the conforming market to 12.6 percent in 1993, and then to 14.1 percent in 1994. The additional years since the 1995 Rule was written have seen the special affordable market maintain itself at an even higher level. Over the past four years (1995–98), the special affordable share of the market has averaged 15.1 percent, or almost 13.0 percent if manufactured and small loans are excluded from the market totals. As mentioned earlier, lending patterns could change with sharp changes in the economy, but the fact that there have been several years of strong affordable lending suggests that the market has changed in fundamental ways from the mortgage market of the early 1990s. The effect of one factor, the growth in the B&C loans, on the special affordable market is discussed below in Section H.2.

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Table D.10

Special Affordable Share of Single-Family Owner-Occupied Mortgage Market

	Home Purchase		Refinance	
	Conforming Market	Market W/O Mfg loans	Conforming Market	Market W/O Mfg loans
1. Very-Low-Income				
1992	8.7 %	7.6 %	4.5 %	4.2 %
1993	10.8	9.6	5.8	5.6
1994	11.9	10.7	11.0	10.2
1995	12.0	10.5	12.3	11.2
1996	12.7	10.8	13.0	12.2
1997	13.0	11.0	14.5	13.9
1998	13.3	11.4	11.3	11.1
2. Low Income in Low Income Areas				
1992	1.7 %	1.6 %	1.1 %	1.0 %
1993	1.8	1.7	1.2	1.2
1994	2.2	2.1	2.3	2.2
1995	2.4	2.2	2.7	2.5
1996	2.3	2.0	2.6	2.5
1997	2.3	2.0	3.0	2.9
1998	2.2	2.0	2.2	2.1
3. Special Affordable (1 plus 2)				
1992	10.4 %	9.3 %	5.5 %	5.2 %
1993	12.6	11.3	7.0	6.8
1994	14.1	12.8	13.2	12.4
1995	14.4	12.7	14.9	13.7
1996	15.0	12.8	15.6	14.7
1997	15.3	13.0	17.6	16.8
1998	15.5	13.4	13.5	13.2

Source: HMDA data. "Market without manufactured housing loans" excludes loans by lenders that primarily originate manufactured housing loans and loans less than $15,000.

b. Very-Low-Income Rental Percentages

Table D.5 in Section F reported the percentages of the single-family rental and multifamily stock affordable to very-low-income families. According to the AHS, 57 percent of single-family units and 49 percent of multifamily units were affordable to very-low-income families in 1995. The corresponding average values for the AHS's six surveys between 1985 and 1995 were 58 percent and 47 percent, respectively.

Outstanding Housing Stock versus Mortgage Flow. As discussed in Section F, an important issue concerns whether rent data based on the existing rental stock from the AHS can be used to proxy rents of newly mortgaged rental units.[74] HUD's analysis of POMS data suggests that it can—estimates from POMS of the rent affordability of newly-mortgaged rental properties are quite consistent with the AHS data reported in Table D.5 on the affordability of the rental stock. Fifty-six (56) percent of single-family rental properties with new mortgages between 1993 and 1995 were affordable to very-low-income families, as was 51 percent of newly-mortgaged multifamily properties. These percentages for newly-mortgaged properties from the POMS are similar to those reported above from the AHS for the rental stock. The baseline projection from HUD's market share model assumes that 50 percent of newly-mortgaged, single-family rental units, and 47 percent of multifamily units, are affordable to very-low-income families.

c. Low-Income Renters in Low-Income Areas

HMDA does not provide data on low-income renters living in low-income census tracts. As a substitute, HUD used the POMS and AHS data. The share of single-family and multifamily rental units affordable to low-income renters at 60–80 percent of area median income (AMI) and located in low-income tracts was calculated using the internal Census Bureau AHS and POMS data files.[75] The POMS data showed that 8.3 percent of the 1995, single-family rental stock, and 9.3 percent of single-family rental units receiving financing between 1993 and 1995, were affordable at the 60–80 percent level and were located in low-income census tracts. The POMS data also showed that 12.4 percent of the 1995 multifamily stock, and 13.5 percent of the multifamily units receiving financing between 1993 and 1995, were affordable at the 60–80 percent level and located in low-income census tracts.[76] The baseline analysis below assumes that 8 percent of the single-family rental units and 11.0 percent of multifamily units are affordable at 60–80 percent of AMI and located in low-income areas.[77]

2. Size of the Special Affordable Market

During the 1995 rule making, HUD estimated a market share for the Special Affordable Goal of 20–23 percent. This estimate turned out to be below market experience, as the special affordable market accounted for almost 29 percent of all housing units financed in metropolitan areas between 1995 and 1997. As explained in Section F.3.a, there are several explanations for HUD's underestimate of the 1995–97 market. The financing of rental properties during 1995–97 was larger than anticipated. HUD's earlier estimates assumed a rental share of 29 percent, which was lower that the approximately 31 percent rental share for the years 1995–97. Another important reason for HUD's underestimate was not anticipating the high percentage of single-family-owner mortgages that would be originated for special affordable borrowers. During the 1995–97 period, 15.4 percent of all (both home purchase and refinance) single-family-owner mortgages financed properties for special affordable borrowers; this compares with 9.5 percent for the 1992–94 period which was the basis for HUD's earlier analysis. The 1995–97 mortgage markets originated more affordable single-family mortgages than anticipated.[78] Furthermore, the special affordable market remained strong during the heavy refinance year of 1998. Over 26 percent of all dwelling units financed in 1998 qualified for the Special Affordable Goal.

The size of the special affordable market depends in large part on the size of the multifamily market and on the special affordable percentages of both owners and renters. Table D.11 gives new market estimates for different combinations of these factors. As before, Case 2 is slightly more conservative than the baseline projections (Case 1) mentioned above. For instance, Case 2 assumes that only 6 percent of rental units are affordable to low-income renters living in low-income areas.

[74] Previous analysis of this issue has focused on the relative merits of data from the recently completed stock versus data from the outstanding stock. The very-low-income percentages are much lower for the recently completed stock—for instance, the average across the five AHS surveys were 15 percent for recently completed multifamily properties versus 46 percent for the multifamily stock. But it seems obvious that data from the recently completed stock would underestimate the affordability of newly-mortgaged units because they exclude purchase and refinance transactions involving older buildings, which generally charge lower rents than newly-constructed buildings. Blackley and Follain concluded that newly-constructed properties did not provide a satisfactory basis for estimating the affordability of newly-mortgaged properties. See ''A Critique of the Methodology Used to Determine Affordable Housing Goals for the Government Sponsored Housing Enterprises.''

[75] Affordability was calculated as discussed earlier in Section F, using AHS monthly housing cost, monthly rent, number of bedrooms, and MSA location fields. Low-income tracts were identified using the income characteristics of census tracts from the 1990 Census of Population, and the census tract field on the AHS file was used to assign units in the AHS survey to low-income tracts and other tracts. POMS data on year of mortgage origination were utilized to restrict the sample to properties mortgaged during 1993–1995.

[76] During the 1995 rule-making process, HUD examined the rental housing stock located in low-income zones of 41 metropolitan areas surveyed as part of the AHS between 1989 and 1993. While the low-income zones did not exactly coincide with low-income tracts, they were the only proxy readily available to HUD at that time. Slightly over 13 percent of single-family rental units were both affordable at the 60–80 percent of AMI level and located in low-income zones; almost 16 percent of multifamily units fell into this category.

[77] Therefore, combining the assumed very-low-income percentage of 50 percent (47 percent) for single-family rental (multifamily) units with the assumed low-income-in-low-income-area percentage of 8 percent (11 percent) for single-family rental (multifamily) units yields the special affordable percentage of 58 percent (58 percent) for single-family rental (multifamily) units. This is the baseline Case 1 in Table D.6.

[78] The 29.0 percent estimate for 1997 also includes manufactured housing and small loans while HUD's earlier 20–23 percent estimate excluded the effects of these loans. Excluding manufacturing housing and small loans from the 1997 market would reduce the special affordable share of 29.0 percent by a percentage point to 28.0 percent. This can be approximated by multiplying the single-family-owner property share (0.69) for 1997 by the 1.4 percentage point differential between the special affordable share of all (home purchase and refinance) single-family-owner mortgages in 1997 with manufactured and small loans included (16.3 percent) and the corresponding share with these loans excluded (14.9 percent). This gives a reduction of 0.97 percentage point. These calculations overstate the actual reduction because they do not include the effect of the increase in the rental share of the market that accompanies dropping manufactured housing and small loans from the market totals.

Table D.11

Special Affordable Mortgage Market: Sensitivity Analysis

	Size of Multifamily Market		
Case 1 With:	$40 Billion	$46 Billion	$52 Billion
(a) Rent Affordable at 60% AMI: Single-Family Rent Percentages= 50%, Multifmaily= 47%			
(b) Low-Income in Low-Income Areas= 8% for Single-Family Rental and 11% for Multifamily			
(c) Single-Family Owner-Occupied's Special Affordable Share: [a]			
15.0%	26.5 %	27.0 %	27.7 %
14.0%	25.8	26.3	27.0
13.0%	25.1	25.6	26.3
12.0%	24.4	24.9	25.6
11.0%	23.6	24.2	24.9
10.0%	22.9	23.5	24.2
9.0%	22.2	22.8	23.5
Case 2 With:			
(a) Rent Affordable at 60% AMI: Single-Family Rent Percentages= 47%, Multifamily= 44%			
(b) Low-Income in Low-Income Areas= 6% for Single-Family Rental and 10% for Multifamily			
(c) Single-Family Owner-Occupied's Special Affordable Share:			
14.0%	23.8 %	24.3 %	24.9 %
13.0%	23.0	23.5	24.2
12.0%	22.3	22.8	23.5
11.0%	21.5	22.1	22.7
10.0%	20.8	21.3	22.0
Case 3 With:			
(a) Rent Affordable at 60% AMI: Single-Family Rent Percentage= 53%, Multifamily= 50%			
(b) Low-Income in Low-Income Areas= 8% for Single-Family Rental and 12% for Multifamily			
(c) Single-Family Owner-Occupied's Special Affordable Share:			
14.0%	28.0 %	28.6 %	29.3 %
13.0%	27.3	27.9	28.6
12.0%	26.6	27.2	27.9
11.0%	25.9	26.5	27.2
10.0%	25.2	25.8	26.6

[a] These percentages are used for home purchase loans. Refinance loans were assumed to be 1.4 percentage points lower for each alternative.

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When the special affordable share of the single-family market for home mortgages is at its 1994–98 level of 14–15 percent, the special affordable market estimate is 26–27 percent under HUD's baseline projections. In fact, the market estimates remain above 24 percent even if the special affordable percentage for home loans falls from its 15-percent-plus level during 1996–1998 to as low as 10–11 percent, which is similar to the 1992 level. Thus, a 24 percent market estimate allows for the possibility that adverse economic conditions could keep special affordable families out of the housing market. On the other hand, if the special affordable percentage stays at its recent levels, the market estimate is as high as 27 percent.[79]

B&C Loans. The procedure for dropping B&C loans from the projections is the same as described in Section F.3.b for the Low- and Moderate-Income Goal. The special affordable percentage for B&C loans is 29.4 percent, which is not much higher than the projected percentages for the overall market given in Table D.9). Thus, dropping B&C loans will not appreciably reduce the overall market estimates. Consider in Table D.11, the case of a single-family-owner percentage of 15 percent, which yields an overall market estimate for Special Affordable Goal of 27 percent. Dropping B&C loans from the projection model reduces the special affordable market share by 0.2 percentage points to 26.8. The effect would be slightly larger for the other cases given in Table D.11.

Based on the data presented in Table D.11 and the analysis of the effects of excluding B&C loans from the market, a range of 23–26 percent is a reasonable estimate of the special affordable market. This range includes market conditions that are much more adverse than have recently existed. Additional sensitivity analyses are provided in the remainder of this section.

Additional Sensitivity Analyses. The market estimate declines by one-half of a percentage point if the estimate of the multifamily mortgage market is changed from $46 billion to $40 billion. For example, when the special affordable share of the owner market is 13 percent, the overall market estimate is reduced from 25.6 percent to 25.1 percent when the multifamily volume assumption is reduced from $46 billion to $40 billion. The market estimates under the more conservative Case 2 projections are approximately two percentage points below those under the Case 1 projections. This is due mainly to Case 2's lower share of single-family investor mortgages (8 percent versus 10 percent in Case 1) and its lower affordability and low-income-area percentages for rental housing (e.g., 53 percent for single-family rental units in Case 2 versus 58 percent in Case 1).

Increasing the volume of single-family originations by $200 billion to $1,300 billion reduces the market estimate by 0.7 percentage points, while reducing the volume of single-family originations by $200 billion to $900 billion increases the market estimate by about one percentage point. Using a recent MBA projection of $950 billion in single-family originations and a 20 percent refinance rate, the special affordable market is projected to be 26.6 percent if multifamily originations are $46 billion, and 26.0 percent if multifamily originations are $40 billion, assuming that the single-family owner-occupied special affordable share is 13 percent.

A recession scenario and a heavy refinance scenario were described during the discussion of the Low- and Moderate-Income Goal in Section F. The recession scenario assumed that special affordable borrowers would account for only 9–10 percent of newly-originated home loans. In these cases, the market share for the Special Affordable Goal declines to 23–24 percent. In the heavy refinance scenario, the special affordable percentage for refinancing borrowers was assumed to be four percentage points lower that the corresponding percentage for borrowers purchasing a home. In this case, the market share for the Special Affordable Goal was typically in the 23–25 percent range, depending on assumptions about the incomes of borrowers in the home purchase market. As noted earlier, the special affordable market share was approximately 26 percent during 1998, a period of heavy refinance activity.

Tax Credit Definition. Data are not available to measure the increase in market share associated with including low-income units located in multifamily buildings that meet threshold standards for the low-income housing tax credit. Currently, the effect on GSE performance under the Special Affordable Housing Goal is rather small. For instance, adding the tax credit condition increases Fannie Mae's 1997 performance by only half a percentage point, from 16.5 to 17 percent. At first glance, this small effect seems at odds with the fact that 26.5 percent of Fannie Mae's multifamily purchases during 1997 involved properties with a very-low-income occupancy of 100 percent, and 43.0 percent involved properties with a very-low-income occupancy of over 40 percent. The explanation, of course, is that most of the rental units in these ''tax-credit'' properties are covered by the very-low-income and low-income-in-low-income-areas components of the Special Affordable Goal.

3. Conclusions

Sensitivity analyses were conducted for the market shares of each property type, for the very-low-income shares of each property type, and for various assumptions in the market projection model. These analyses suggest that 23–26 percent is a reasonable estimate of the size of the conventional conforming market for the Special Affordable Housing Goal. This estimate excludes B&C loans and allows for the possibility that homeownership will not remain as affordable as it has over the past five years. In addition, the estimate covers a range of projections about the size of the multifamily market.

I. Impact of New FHA Loan Limits

This section discusses recent statutory changes that raised the FHA loan limits and the impact of these changes on the conventional market and the ability of the GSEs to meet their housing goals.

Studies have shown that the FHA has been the primary bearer of credit risk on home mortgage loans to lower-income and African American or Hispanic borrowers and in low-income, central city, and minority neighborhoods. Many of the loans that FHA insures would qualify for one or more of the GSEs' housing goals. Raising the FHA loan limits will increase the portion of the mortgage market that is eligible for FHA, possibly resulting in a shift of loans from the conventional market to FHA. It could also shift loans that would otherwise meet the GSE goals from the conventional market to FHA. To the extent this occurs, the new FHA loan limits could have an impact on the conventional market and on the GSEs.

The information in this section suggests that many of the new FHA loans would not qualify for conventional financing. Some of the above mentioned studies have also shown that there has been little overlap between FHA and the conventional market prior to the loan limit increase. This is likely to be the case for newly eligible FHA loans as the higher loan limits extend FHA access to more families who are denied mortgage credit or otherwise underserved by the conventional market. The new FHA loans are likely to collectively resemble current FHA loans in many respects, but with higher loan amounts and borrower incomes. Differential homeownership rates as well as mortgage credit denials which persist across income levels for minority families and inner city residents provide evidence that underserved markets exist for FHA to serve at these higher loan amounts and incomes.

The number of new FHA loans resulting from the loan limit increase is likely to be relatively small. While reasonable estimates of new FHA volume could vary, their range is likely to be under 50,000 new loans compared to FHA's total home purchase loan volume of about 800,000 in 1998. Standard and Poor's Insurance Ratings Service does not offer a numerical estimate, but this rating agency finds the outlook for the private mortgage insurance industry is stable through 2001, and suggests that the portion of the market that FHA will serve near the new loan limits will be less than the portion it presently serves at lower levels. Similarly, Moody's Investors Service believes the higher FHA loan limits will ''dent'' the volumes of private mortgage insurers, but is not a source of significant concern with regard to the industry outlook.

Furthermore, most new loans are expected to come from higher cost housing markets. In

[79] The upper bound of 27 percent from HUD's baseline special affordable model is obtained when the special affordable share of home purchase loans is 15.0 percent, which was the figure for 1997 (see Table D.10). However, the upper bound of 27 percent is below the 1997 estimate of the special affordable market of 29.0 percent presented earlier (see Section F.3.a). There are several reasons for this discrepancy. As mentioned earlier, the rental share in HUD's baseline projection model is less than the rental share of the 1997 market. In addition, HUD's projection model assumes that the special affordable share of refinance mortgages will be 1.4 percentage points less than the corresponding share for home purchase loans (1.4 percent is the average difference between 1992 and 1998). But in 1997, the special affordable share (17.6 percent) of refinance mortgages was larger than the corresponding share (15.3 percent) for home loans.

many of these markets the old FHA loan limit ceiling denied FHA access to all but the bottom tier of the local housing market. In these higher cost markets, the new FHA loans will typically be above $150,000 requiring borrower incomes in excess of $60,000 to qualify.

The discussion of this issue is organized as follows. Section I describes the statutory changes in the FHA floor and ceiling. Section 2 discusses the estimated budget impact of the changes in the legislation, including the FHA volume increases that were assumed for making this estimate. Section 3 provides the estimated range of new FHA loan volume. Section 4 discusses why the overlap with the conventional market for the new FHA loans should be small. Finally Section 5 discusses the impacts on the conventional market and the GSEs.

1. Changes in the Statutory FHA Loan Limit Floor and Ceiling

The Department's FY 1999 Appropriations Act raised the FHA loan limit floor and ceiling to 48 and 87 percent, respectively, of the GSEs' conforming loan limit. Prior to this change the FHA loan limit floor and ceiling were 38 and 75 percent, respectively, of the conforming loan limit. The statute did not change the method of establishing FHA loan limits by locality: FHA loan limits for a 1-family dwelling continue to be set at 95 percent of local median home sales price, subject to the statutory floor and ceiling as the minimum and maximum, respectively.[80]

The Department implemented the new FHA loan limit floor and ceiling in October 1998. In January 1999 the Department again revised FHA loan limits to reflect the higher conforming loan limit that went into effect on January 1.[81]

2. Estimated Budget Impacts

Prior to passage of the 1999 HUD Appropriations Act, the Department estimated the budget impact of the legislative proposal to raise the FHA loan limit floor and ceiling to 48 and 87 percent, respectively, of the conforming loan limit.[82] At that time the Department estimated the percentage increase in the number of FHA-insured home purchase loans in FY 1999 relative to the prior year would be about 2.6 percent in metropolitan areas and about 11 percent in non-metropolitan areas. The average loan amount of the new loans was estimated at the time to be about $143,000, reflecting the fact that some new loans would come in at or near the new floor of (then) $109,032 and others in higher cost markets would come in at or near the new ceiling of (then) $197,621. Areas with 1998 loan limits between the new floor of $109,032 and the 1998 ceiling of $170,362 were considered to unaffected by the statutory changes because their loan limit would continue to be set at 95 percent of local median sales price. The Department estimated that 36 high-cost metropolitan areas would be affected by the higher proposed ceiling, 174 lower-cost metropolitan areas and most non-metropolitan counties would be affected by the higher floor, and 115 moderate-cost metropolitan areas would be unaffected.

The biggest impact on FHA volume was expected from raising the ceiling in the 36 highest cost metropolitan areas. In these high cost areas, the old FHA ceiling (75 percent of the conforming loan limit) was lower than 95 percent of the local median house price. Thus, the old ceiling limited FHA eligibility to the lower-priced portion of the local market. Raising the ceiling would extend FHA eligibility into the higher volume middle of the local sales market for these high cost markets.

In lower cost areas where the old FHA floor applied, FHA eligibility was already above the middle of the local market. That is, the old floor (38 percent of the conforming loan limit) was higher than 95 percent of the local median house price.[83] Raising the FHA floor would have a relatively small impact in these lower cost areas, as FHA is likely to capture a smaller share of the newly eligible upper portion of the lower market.

Two additional provisions enacted by the HUD Appropriations Act were not incorporated into the Department's original budget estimate. These are (1) the provision which directed the Department to set new loan limits for entire metropolitan areas based on the median home sales price of the highest cost county within the metropolitan area, and (2) the downpayment simplification provision, which not only simplified the minimum FHA downpayment calculation but also eliminated the 10 percent marginal downpayment requirement for higher priced homes.[84]

The high cost county provision was estimated to raise the budget impact by about 6 percent to $85 million. The impact was at first considered to be small because the Department did not have access to county-level median sales prices in most metropolitan areas with which to implement this provision. Rather, changes due to the highest cost county provision were assumed to come from locally generated sales data submitted to the Department by individual counties to appeal their FHA loan limits. Loan limit changes based on previously approved local appeals would not have a large impact on FHA volume, and would affect primarily moderate cost metropolitan areas (most being among the 115 moderate cost areas unaffected by the new floor and ceiling as noted above). However, the impact of this provision may prove to be larger than the original estimate as additional appeals are being filed from multiple county metropolitan areas, and as the Department

[80] Different percentages of local median sales price apply to 2-, 3-, and 4-family dwellings.

[81] The Department's January 1999 update also represented a comprehensive update of FHA loan limits based on an analysis of 1998 local median sales prices from various data sources. This comprehensive update, the first undertaken by the Department since 1995, raised FHA loan limits in over 90 percent of the nation's 3,141 counties. In many of the counties which received increases in January 1999, the FHA loan limit had not changed since the previous comprehensive update in 1995. For many of these areas the 1999 increase was due to the Department's reestimation of the local median sales price, and not due to the statutory changes.

[82] The budget impact was estimated to be $80 million in first year savings, which represents the net present value of future cash flows associated with the new loans the Department expected to make as a result of the higher loan limit floor and ceiling.

The methodology used by the Department to arrive at these budget estimates was reviewed by the Office of Management and Budget and by the Congressional Budget Office. The methodology was based on a detailed analysis of the 1996 Home Mortgage Disclosure Act data disaggregated to the individual metropolitan area level. For each metropolitan area, the Department analyzed the HMDA distribution of all home purchase loans made in 1996.

The first step in the Department's methodology was to determine the number and size of newly eligible loans in metropolitan areas (as reported in HMDA) had the higher FHA floor and ceiling provisions been in effect in 1996. To do this, the Department used the actual 1996 FHA loan limit for each area and estimated new hypothetical FHA limits for each are using 48 and 87 percent of the 1996 conforming loan limit of $207,000 as the new floor and ceiling. The next step was to estimate the share of the newly eligible loans in each area that might come to FHA. The FHA shares were estimated for each decile of the HMDA distribution in the local market, assuming that FHA's average share of the eligible market in each MSA would decline as FHA's penetration extended into the higher deciles of the market. The assumption of declining FHA market shares in the upper deciles of the market was reasonable for two reasons. First, higher income borrowers generally have more choices in terms of access to conventional financing. Second, FHA's downpayment requirements at the time were greater for higher priced homes. Under FHA downpayment rules in effect at the time this analysis was performed, FHA required a 10 percent marginal downpayment on the amount of property acquisition cost above $125,000. (Acquisition cost is defined as the lesser of sales price or appraised value plus allowable borrower-paid closing costs.) Higher downpayment requirements in the upper end of the market made FHA financing a less attractive alternative to conventional financing for potential borrowers who could qualify for a conventional loan.

For non-metropolitan areas, the methodology was less area specific because HMDA data do not generally cover non-metropolitan areas. Rather, 1995 American Housing Survey data was used to determine that about 75 percent of the rural market was already eligible for FHA under the old floor (38 percent of conforming loan limit). Despite the high eligibility, only 7 percent of the rural market was actually financed with FHA-insured loans. Raising the FHA floor to 48 percent of the conforming loan limit was estimated to increase FHA volume by about 11 percent, assuming a declining share of the newly eligible existing housing market, plus some additional demand for new construction.

[83] The Department used 1995 American Housing Survey data to estimate that 75 percent of the rural market was already covered by the old FHA floor at 38 percent of conforming loan limit.

[84] Prior to the enactment of HUD's FY 1999 Appropriations Act, FHA's statutory downpayment requirements were 3 percent of the first $25,000 of property acquisition cost, 5 percent of the next $100,000 of acquisition cost, and 10 percent of the acquisition cost above $125,000. (Acquisition cost is defined as the lesser of sales price or appraised value of the property plus allowable borrower-paid closing costs.) The new provision limits the mortgage to 97.75 percent (or 97.15 percent in areas with lower than average closing costs), subject to the borrower having a 3 percent minimum cash investment. (Borrower cash investment includes allowable borrower-paid closing costs.) This change in the FHA downpayment provisions will raise the maximum FHA mortgage amount for buyers of higher priced homes.

seeks out new national sources of county level median sales prices.[85]

The downpayment provisions in the HUD Appropriations Act were tested in pilot programs conducted by FHA in Alaska and Hawaii during 1997. In both these states, where home prices are generally higher than the rest of the nation, the downpayment simplification pilot raised the percentage of large loans that FHA insured in 1997 relative to the pre-pilot year of 1996. In the Department's 1998 report to Congress on the Alaska and Hawaii pilots, it was reported that during these two years loans over $150,000 increased from 20 percent to 28 percent in Alaska, and from 51 percent to 54 percent in Hawaii.[86] This experience suggests that the downpayment simplification provision will affect the volume of large loans the Department insures and could produce a higher impact from raising the FHA loan limit ceiling.

3. Estimated FHA Loan Volume

The inclusion of the high cost county and the downpayment simplification provisions in the HUD FY 1999 Appropriations Act suggest that the estimate of about a 3 percent increase in FHA home purchase volume due to the higher FHA loan limits may be low. The impacts of these two additional provisions are difficult to quantify with precision. A volume estimate for FHA which takes into account the high cost county and downpayment simplification provisions could be two times the original 3 percent estimate. That is, the combined impact of all the statutory changes on FHA loan volume would be an increase of approximately 6 percent in home purchase mortgages insured.

In addition, the average loan amount of new loans, which had been estimated at $143,000, should now be estimated at about $154,000, reflecting new loans now coming from moderate-cost previously unaffected areas (due to the high cost county provision), and more loans than originally estimated coming from the highest cost areas (due to downpayment simplification).

The 1999 dollar volume of new FHA business associated with the loan limit increase and the other provisions of the 1999 Appropriations Act is estimated as follows. In FY 1998, the Department insured about 800,000 home purchase loans. Using 6 percent as the estimated increase in the number of home purchase loan cases that FHA will insure in a typical year gives about 50,000 new loans. At an average loan amount of $154,000 per new loan, the estimated annual dollar volume impact would be over $7.0 billion.

An estimate of the breakdown of the new loans by size and minimum income to qualify is as follows. If one assumes the upper end of the likely range of new FHA home purchase loan cases (that is, a 6 percent increase), then the following is an estimated breakdown of loan size and minimum borrower incomes:[87]

Range of loan amounts	Number of new loans	Average New loan amount	Minimum income to qualify for average loan
Under $150,000	12,000	$92,000	$33,000
$150,000 and Over	36,000	175,000	60,000
Total	48,000	154,000	

4. Overlap with the Conventional Market Should be Small

The Department based its original budget impact estimate and the revised volume estimate on an analysis of HMDA data because this data source was determined to be the best available indicator of local market activity by loan size. By using HMDA data for this purpose, one might infer that all the new FHA-insured loans will result in a one-for-one reduction in conventional lending. Rather, as will be discussed below, the Department believes that FHA will extend new housing opportunities to those who are inadequately served by the conventional markets. HMDA data are limited in that they do not support an analysis of the potential overlap between the new FHA loans and the existing conventional market. The question of overlap will instead be addressed by the discussion and analysis presented below.

a. FHA Competition with Private Mortgage Insurance

In a February 1999 commentary on the outlook for the U.S. residential mortgage insurance industry, Standard and Poor's Insurance Ratings Service projected a stable outlook for the PMI industry through 2001 and makes the following comments on the impact of the higher FHA loan limits:

Congress recently increased the size limits of loans eligible for Federal Housing Administration insurance. The [FHA] limit in ''high cost'' areas is . . . not far below the GSE limit of $240,000. While FHA borrowers meet lower standards than conforming borrowers, and pay higher rates and fees for their loans, a good number of FHA borrowers are thought to qualify for the conforming market. There is no doubt that the increase in the FHA size limitation will pull eligible borrowers from the conforming market. However, borrowers who qualify for private mortgages generally have more financing alternatives as the loan amounts rise. Therefore, the portion of eligible loans that the FHA takes at these upper levels should be less than that of the loans it insures at lower levels.[88]

Similarly, Moody's Investors Service, in an October, 1998 report on the outlook of the U.S. mortgage insurance industry, states

The recently approved increase of the size of eligible mortgages under the FHA programs, while denting the private mortgage insurers' volumes, is not a source of significant additional concern.[89]

The Standard and Poor's analysis is correct in focusing on the impact of the new high cost ceiling and not the new floor. In areas affected by the higher floor, the old floor already gave borrowers access to well over half of the local sales market. Raising the floor only increased FHA access to the upper tiers of these low costs markets and made FHA financing of new construction more feasible. Rather, in the highest cost markets, which were capped by the old ceiling, the new FHA ceiling will have the greatest impact. In these high cost areas, FHA access was previously limited to the lower tiers of the local market. The increase in the ceiling will now extend FHA access to more of the higher-volume middle portion of the market. Yet, as the Standard and Poor's analysis also correctly points out, the higher dollar loan amounts suggest potential borrowers will have more alternatives in the conventional market, and when comparing FHA premiums with PMI premiums, most who qualify for a conventional loan will do so.

b. Cost Comparison: FHA Premiums are Higher

Standard and Poor's acknowledgment that FHA costs are higher than PMI costs is consistent with the Department's own analysis of the premium differentials between FHA and PMI. Except for loan to value ratios above 95 percent (which represent a very small, albeit growing, fraction of the loans that the PMIs insure) FHA's premiums are much higher than PMI premiums. For example, a 30-year $100,000 conventional loan with a 90 percent LTV

[85] The Department is working with the Office of Federal Housing Enterprise Oversight to develop additional data on local median sales price that may prove useful for future FHA loan limit determinations.

[86] ''A Study of FHA Downpayment Simplification,'' April 1998, Tables 11 and 12.

[87] Minimum incomes based on a 7.5 percent, 30–year fixed-rate mortgage loan and a front-end ratio of 29 percent.

[88] Standard and Poor's, 1999. ''Stable Outlook Projected for U.S. Domestic Residential Mortgage Insurance, Industry Conditions and Outlook 1998 to 2001,'' Insurance Ratings Service Commentary, February 17, p. 9.

[89] Moody's Investors Service, Inc., 1998. ''US Mortgage Insurers Industry Outlook,'' October, p. 8.

ratio will typically cost a borrower about $2,900 (net present value at origination) in PMI premiums, assuming the PMI coverage is canceled when the LTV is amortized down to 80 percent. The FHA premium, which cannot be canceled without the lender's consent, will cost $6,000 for a similar loan if the loan is held to term, or $5,200 if the loan is prepaid after 8 years.[90] For the highest LTV loans—those with LTVs above 95 percent—the PMI premium, assuming cancellation when the LTV amortizes down to 80 percent, is $6,600, or $5,500 if the loan is prepaid after 8 years. The comparable FHA premium is $7,300, or $5,200 if the loan is prepaid after 8 years.[91] Although the present value of the FHA premium on these highest LTV loans can be less than the typical PMI premium if the loan is prepaid early, very-low-downpayment loans have a tendency to prepay more slowly than loans with higher initial equity.

c. Evidence of Little Overlap Before Loan Limit Increase

Although the Standard and Poor's report states that ''a good number'' of FHA borrowers (prior to the loan limit increase) were thought to qualify for the conventional market, there have been numerous studies showing that the overlap between FHA and the conventional market has actually been rather small. A 1996 study by the United States General Accounting Office (GAO) documents that FHA leads in the provision of insurance for riskier low-downpayment mortgages.[92] The GAO report goes on to provide evidence that there has in fact been very little overlap between FHA and PMI loans. According to the GAO:

(i) 65 percent of FHA loans have downpayments of 5 percent or less, compared to 8 percent of PMI loans and less than 2 percent of loans purchased by the GSEs.

(ii) More than three-fourths of FHA-insured first-time borrowers would not have met PMI downpayment requirements. And FHA borrowers who do have the cash for a conventional loan downpayment often fail to meet the more stringent PMI credit standards.

In addition, a recent study by the Board of Governors of the Federal Reserve concluded that FHA is the primary bearer of credit risk for home purchase loans to lower-income and black or Hispanic borrowers and in low-income and minority neighborhoods.[93] The Federal Reserve Board study concluded that FHA bears about two-thirds of the aggregate credit risk for low-income and minority borrowers and their neighborhoods, while private mortgage insurers bear only 6 to 8 percent of this risk, and the GSEs bear only 4 to 5 percent of this risk. With this demonstrated capacity to carry greater risk than the conventional market, FHA complements, not competes with, private sector efforts to expand homeownership opportunities.

d. The New FHA Loans Will Continue to Address Underserved Markets

Other sources confirm that the higher FHA loan limits, particularly those in the highest cost areas (but also other areas), can be useful in addressing many of the same underserved markets that FHA currently addresses. Appendix A refers to studies which show that homeownership rates for young married couples, female-headed households, center city residents, and racial and ethnic minorities lag far behind the national average. In addition, these homeownership gaps persist across income levels.

FHA, which currently serves a disproportionate share of young married couples, female-headed households, center city residents, and racial and ethnic minorities, will continue to address these underserved markets with the new loans based on higher loan limits.[94] Given these homeownership differences which persist across income levels, the higher FHA loan limits will enable FHA extend its service to underserved markets at higher income levels.

e. HMDA Denials by Income Level

Another source that suggests higher FHA loan limits can be useful in addressing many of the same underserved markets that FHA currently addresses is HMDA. Mortgage lending information gathered by the Federal Reserve Board under requirements of the Home Mortgage Disclosure Act shows that in 1996 some 350,000 households—about one in eight applicants—were denied credit in the conforming conventional market. These denials limit homebuying opportunities for both minority and white households seeking to live in urban and suburban communities. Mortgage denial rates are particularly high for racial and ethnic minorities, but white households accounted for nearly two-thirds of the 350,000 denials. In addition to the high denial rates for racial and ethnic minorities seeking to purchase homes in inner city areas, whites choosing to live in the city are also denied mortgages at higher rates than their suburban counterparts. About a third of the 350,000 denials were made to applicants with incomes above the area median income, and nearly a fourth were made to applicants with incomes greater than 120 percent of area median income.

6. Why Small Impacts on the Conventional Market and the GSEs Are Likely

The impacts of the higher FHA loan limits on the conventional market and on the ability of the GSEs to meet their housing goals are likely to be small. The reasons for this conclusion are as follows.

First, there has been little overlap between FHA and the conventional market prior to the loan limit increase, and this is likely to be the case for newly eligible loans as well. The loan limit increase will extend FHA access to more families who are denied mortgage credit or otherwise underserved by the conventional market.

Second, the number of new FHA loans resulting from the loan limit increase is likely to be relatively small. While reasonable estimates of new FHA volume could vary, their range is likely to be under 50,000 new loans compared to FHA's total home purchase loan volume of about 800,000 in 1998. Two major Wall Street rating agencies, while not offering specific volume estimates, have suggested that the impacts of the FHA changes will be small on the private mortgage insurance industry.

Finally, many of these new FHA loans are expected to come from high cost housing markets with loan amounts typically above $150,000 and borrowers with annual incomes in excess of $60,000. Even at these higher loan amounts and borrower incomes, the FHA's higher premium costs would motivate most borrowers to favor conventional financing with private mortgage insurance if they qualified.

The new FHA loans are likely to come from borrowers who are being underserved by the conventional market, collectively resembling current FHA loans in many respects, but with higher loan amounts and borrower incomes. Differential homeownership rates as well as mortgage credit denials which persist across income levels for minority families and inner city residents provides evidence that underserved markets exist for FHA to serve at these higher loan amounts and incomes.

Appendix E—GSE Mortgage Data and AHAR Information: Proprietary Information/Public-Use Data

The following matrices distinguish proprietary from public-use mortgage data elements. A ''YES'' designation indicates that the data element is proprietary and not included in the public use database in the format indicated. A ''NO'', ''NO, Added field'', ''Yes, but recode'', and ''YES, but redefine and recode as'' indicate that the data element is included in the public use database. Certain data are coded as missing or not available either because the data was not submitted or because the data is proprietary.

The first matrix relates to GSE data on single-family owner-and renter-occupied 1–

[90] Assumes 25 percent PMI coverage, an annual PMI premium of 0.52 percent, a mortgage rate of 7.5 percent, and a discount rate of 7 percent. The PMI cost for a loan prepaid after 8 years is not shown because the PMI coverage would be canceled before the 8th year. The FHA premium is 2.25 percent upfront, plus 0.5 percent annually for 12 years. These assumptions do not reflect recent premium reduction initiatives by the GSEs and FHA under which the GSEs will reduce PMI coverage requirements and FHA will reduce its upfront premium for some borrowers. None of these initiatives have achieved high volumes as yet.

[91] Assumes 30 percent PMI coverage, an annual PMI premium of 0.9 percent, a mortgage rate of 7.5 percent, and a discount rate of 7 percent. The FHA premium is 2.25 percent upfront, plus 0.5 percent for 30 years. As noted in the prior footnote, the assumptions do not reflect recent premium reduction initiatives by the GSEs and FHA.

[92] United States General Accounting Office, 1998. ''FHA's Role in Helping People Obtain Home Mortgages.'' GAO/RCED–96–123.

[93] Glenn B. Canner, Wayne Passmore, and Brian J. Surette, 1996. ''Distribution of Credit Risk Among Providers of Mortgages to Lower-Income and Minority Homebuyers.'' *Federal Reserve Bulletin,* 82(12), 1077–1102.

[94] FHA has already been filling credit gaps by serving a disproportionate number of young first-time buyers, borrowers making low downpayments, households living in urban areas, African-Americans and Hispanics, and lower-income borrowers. HMDA data from 1996 indicate that while FHA provided mortgage credit to about 20 percent of conforming loans in metropolitan areas, it insured nearly 40 percent of all such loans made to African American or Hispanic borrowers.

4-unit properties. The second matrix relates to property-level data on multifamily properties. The third matrix relates to unit-class level data on multifamily properties. The unit-classes are defined by the GSEs for each property and are differentiated based on the number of bedrooms in the units and on the average contract rent for the units. A unit-class must be included for each bedroom/rent category represented in the property.

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Matrix E.1

GSE Single-Family Mortgage Data
Owner- and Renter-Occupied 1- to 4-Unit Properties
Proprietary Information/Public-Use Data

The "Census Tract File" contains mortgage-level data on all single-family properties.
The "National File A" contains mortgage-level data on owner-occupied 1-unit properties.
The "National File B" contains unit-level data on all single-family properties.

#	Field Description	Values	Census Tract File	National File A	National File B
0	Agency Flag	1=Fannie Mae 2=Freddie Mac	NO	NO	NO
1	Loan Number		YES, but recode as a Random Number[1]	YES, but recode as a Random Number[1]	YES, but recode as a Random Number[1]
2	US Postal State	0=Missing	NO	YES	YES
3	US Postal Zip Code		YES	YES	YES
4	MSA Code	0000=Missing	NO	YES, but recode as: 1=Metropolitan 2=Non-metropolitan 9=Missing	YES, but recode as: 1=Metropolitan 2=Non-metropolitan 9=Missing
5	Place Code - FIPS		YES	YES	YES
6	County - 1990 Census	000=Missing	NO	YES	YES
7	Census Tract/BNA - 1990 Census	000000=Missing	NO	YES	YES
8[2]	Census Tract Geographic Designation	1=Tract Entirely Within Central City 2=Tract Entirely Outside Central City 3=Central City Split Tract 9=Not Able To Code	NO	YES	YES
9[2]	Central City Flag 1	9999=Not Able To Code	NO	YES	YES
10[2]	Central City Flag 2	9998=Not Available 9999=Not Applicable	NO	YES	YES
11	1990 Census Tract - Percent Minority	9999=Not Available	NO	YES, but recode as: 1=0- <10% 2=10- <30% 3=30- 100% 9=Missing	YES, but recode as: 1=0-<10% 2=10- <30% 3=30- 100% 9=Missing

2

#	Field Description	Values	Census Tract File	National File A	National File B
12	1990 Census Tract - Median Income	999999=Not Available	NO	YES	YES
13	1990 Local Area Median Income	999999=Not Available	NO	YES	YES
14	Tract Income Ratio	9999=Not Applicable	NO	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing
15	Borrower(s) Annual Income	99999999=Not Available	YES, but recode in terms of dollars for year of acquisition.	YES	YES
16	Area Median Family Income	999999=Not Available or Withheld as Proprietary	YES, but recode in terms of dollars for year of acquisition.	YES	YES
17[3]	Borrower Income Ratio	9999=Not Applicable, Not Available, or Withheld as Proprietary	YES, but recode proprietary data as 9999.	YES, but recode as: 1=0- <=60% 2=60 - <=100% 3= >100 9=Not Applicable	YES, but redefine and recode as:[3] 1=0- <=60% 2=60- <=100% 3= >100 9=Not Applicable
18	Acquisition UPB		YES, but recode as: Actual values for < $200,000 999998= >=$200,000 999999=Missing	YES	YES
19	LTV at Origination	999=Not Applicable	YES	YES, but recode as: 1=0- <=60% 2=60- <=80% 3=80- <=90% 4=90- <=95% 5= > 95% 9=Missing	YES

#	Field Description	Values	Census Tract File	National File A	National File B
20	Date of Mortgage Note		YES	YES	YES, but recode as: 1=Originated same calendar year as acquired 2=Originated prior to calendar year of acquisition 9=Missing
21	Date of Acquisition		YES	YES	YES
22	Purpose of Loan	1=Purchase 2=Refinancing 3=Second Mortgage 4=Rehabilitation 9=Not Applicable/Not Available	NO	NO	NO
23	Cooperative Unit Mortgage	1=Yes 2=No 8=Not Available 9=Not Applicable	YES	YES	YES
24[2]	Refinancing Loan from Own Portfolio	1=Yes 2=No 9=Not Applicable	YES	YES	YES
25	Special Affordable, Seasoned Loan: Are Proceeds Recycled?	1=Yes 2=No 9=Not Applicable	YES	YES	YES
26	Product Type	01=Fixed Rate 02=ARM 03=Balloon 04=GPM/GEM 05=Reverse Annuity Mortgage 06=Other 07...98=List Other Distinct Products 99=Not Available	YES	YES	YES

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#	Field Description	Values	Census Tract File	National File A	National File B
27	Federal Guarantee	1=FHA/VA 2=FMHA-Guaranteed Rural Housing Loan 3=HECMs 4=No Federal Guarantee 5=Title 1-FHA	NO	NO	NO
28	RTC/FDIC	1=Yes 2=No	YES	YES	YES
29	Term of Mortgage at Origination		YES	YES	YES
30	Amortization Term	998=Non-Amortizing Loan 999=Not Available	YES	YES	YES
31[4]	Lender Institution Name		YES	YES	YES
32[4]	Lender City		YES	YES	YES
33[4]	Lender State		YES	YES	YES
34	Type of Seller Institution	1=Mortgage Company 2=SAIF Insured Depository Institution 3=BIF Insured Depository Institution 4=NCUA Insured Credit Union 5=Other	YES	YES	NO
35	Number of Borrowers	99=Missing	NO	YES	YES
36	First-Time Home Buyer	1=Yes 2=No 9=Not Available	NO	YES	YES
37	Mortgage Purchased under GSE's Community Lending Program	1=FNMA's Community Homebuyer Program 2=FNMA's Community Lending Other 3=FNMA's Other Housing Impact Programs OR 1=FHLMC's Affordable Gold 2=FHLMC's Alternative Qualifying 9=Not Applicable (either GSE)	YES	YES	YES

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#	Field Description	Values	Census Tract File	National File A	National File B
38	Acquisition Type	1=Cash 2=Swap 3=Other 4=Credit Enhancement 5=Bond or Debt Purchase 6=REMIC 7=Reinsurance 8=Risk Sharing 9=REIT	YES	YES	YES
39	GSE's Real Estate Owned	1=Yes 2=No 3=Not Available	YES	YES	YES
40[2]	Public Subsidy Programs	1=Federal only 2=State or Local only 3=Other/Private Subsidy only 4=Federal and State or Local 5=Federal and Other 6=State or Local and Other 7=Federal, State or Local and Other 9=Data Not Provided	YES	YES	YES
41	Borrower Race or National Origin	1=American Indian or Alaskan Native 2=Asian or Pacific Islander 3=Black 4=Hispanic 5=White 6=Other 7=Information Not Provided by Applicant In Mail or Telephone Application 8=Not Applicable 9=Not Available	NO	NO	NO

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#	Field Description	Values	Census Tract File	National File A	National File B
42	Co-Borrower Race or National Origin	1=American Indian or Alaskan Native 2=Asian or Pacific Islander 3=Black 4=Hispanic 5=White 6=Other 7=Information Not Provided by Applicant In Mail or Telephone Application 8=Not Applicable 9=Not Available	NO	NO[6]	NO[6]
43	Borrower Gender	1=Male 2=Female 3=Information Not Provided by Applicant In Mail or Telephone Application 4=Not Applicable 9=Not Available	NO	YES, but recode to combine Fields 43 and 44: 1=Male(s) only 2=Female(s) Only 3=Male and Female 9=Original 3, 4, 9	YES, but recode to combine Fields 43 and 44: 1=Male(s) only 2=Female(s) Only 3=Male and Female 9=Original 3, 4, 9
44	Co-Borrower Gender	1=Male 2=Female 3=Information Not Provided by Applicant In Mail or Telephone Application 4=Not Applicable 9=Not Available	NO	YES	YES
45	Age of Borrower	999=Data Not Provided	NO	YES	YES
46	Age of Co-Borrower	999=Data Not Provided	NO	YES	YES
47[5]	Occupancy Code	1=Principal Residence/Owner-Occupied 2=Second Home 3=Investment Property (Rental) 9= Not Available	YES, but recode as: 1= Owner-Occupied Property (1-4 Units) 2= Investment Property (1-4 Units) 9= Not Available	YES	YES, but redefine and recode as:[5] 1=Owner-Occupied 2=Rental Unit in an Owner-Occupied Property 3=Investment Property (Rental) 9=Not Available

#	Field Description	Values	Census Tract File	National File A	National File B
48	Number of Units		YES	NO	NO
49	Unit - Number of Bedrooms	99=Data Not Provided	YES	YES	YES
50	Unit - Owner Occupied	1=Yes 2=No	YES	YES	NO
51	Unit - Affordability Category	1=Low-Income Family (but not Very Low-Income) in a Low-Income Area 2=Very Low-Income Family, in a Low-Income Area 3=Very Low-Income Family, Not in a Low-Income Area 4=Other 9=Not Available 0=Missing	YES	NO	NO
52	Unit - Reported Rent Level	99999=Not Applicable	YES	YES	YES
53	Unit - Reported Rent Plus Utilities	99999=Not Applicable	YES	YES	YES
54	Fannie Mae Exclusions	1=Excluded from Goal Reporting	YES	YES	YES
55[4]	Geographically Targeted Indicator	1=Yes 2=No 9=Not Applicable	NO, Added Field	NO, Added Field	NO, Added Field

[1] Different random number on each of the tract and national files.

[2] Not applicable to 1996 and beyond data sets. Central city is as defined by the Office of Management and Budget.

[3] The borrower income ratio field is defined for rental units on National File B to reflect the affordability of units based on rent data submitted by the GSEs to the Secretary.

[4] Not applicable to 1993-1995 data sets.

[5] National File B is recoded so that rental and owner-occupied units of 2-4 unit properties can be distinguished.

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Matrix E.2

GSE Multifamily Mortgage Data
Property Level
Proprietary Information/Public-Use Data

The "Census Tract File" contains property level data on all multifamily properties.
The "National File" consists of two parts: one part contains property level data and the other consists of unit-class-level data for all multifamily properties.

#	Field Description	Values	Census Tract File	National File
0	Agency Flag	1=Fannie Mae 2=Freddie Mac	NO	NO
1	Loan Number		Yes, but recode as a Random Number[1]	Yes, but recode as a Random Number[1]
2	US Postal State	00=Missing	NO	YES
3	US Postal Zip Code		YES	YES
4	MSA Code	0000=Missing	NO	YES
5	Place Code - FIPS		YES	YES
6	County - 1990 Census	000=Missing	NO	YES
7	Census Tract/BNA - 1990 Census	000000=Missing	NO	YES
8[2]	Census Tract Geographic Designation	1=Tract Entirely Within Central City 2=Tract Entirely Outside Central City 3=Central City Split Tract 9=Not Able To Code	NO	YES
9[2]	Central City Flag 1	9999=Not Able To Code	NO	YES
10[2]	Central City Flag 2	9998=Not Available 9999=Not Applicable	NO	YES
11	1990 Census Tract - Percent Minority	9999=Not Available	NO	YES, but recode as: 1=0-<10% 2=10- <30% 3=30- 100% 9=Missing
12	1990 Census Tract - Median Income	999999=Not Available	NO	YES

#	Field Description	Values	Census Tract File	National File
13	1990 Local Area Median Income	999999=Not Available	NO	YES
14	Tract Income Ratio	9999=Not Applicable	NO	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing
15	Area Median Family Income	999999=Not Available	NO	YES
16	Affordability Category	1= >=20% are especially-low-income and <40% are very-low-income 2= <20% & >=40% 3= >=20% & >=40% 4= <20% & <40% 8=Not Available 9=Not Eligible 0=Missing	YES	NO
17	Acquisition UPB		YES, but recode as: 1= <= $500,000 2= $500,000-<=$1m 3= $1m-<=$2m 4= $2m-<=$4m 5= > $4m 9=Missing	YES
18	Participation Percent		YES	YES
19	Date of Mortgage Note		YES	YES, but recode as: 1= Originated same calendar year as acquired 2= Originated prior to calendar year of acquisition 9= Missing

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#	Field Description	Values	Census Tract File	National File
20	Date of Acquisition		YES	YES
21	Purpose of Loan	1=Purchase 2=Refinancing 3=New Construction 4=Rehabilitation 9=Not Applicable/Not Available	YES	NO
22	Cooperative Project Loan	1=Yes 2=No 8=Not Available 9=Not Applicable	YES	YES
23[2]	Refinancing Loan from Own Portfolio	1=Yes 2=No 9=Not Applicable	YES	YES
24	Special Affordable, Seasoned Loan: Are Proceeds Recycled?	1=Yes 2=No 9=Not Applicable	YES	YES
25	Mortgagor Type	1=Individual 2=For Profit Entity 3=Nonprofit Entity 4=Public Entity 5=Other	YES	YES
26	Term of Mortgage at Origination		YES	YES
27	Loan Type	1=Fixed Rate 2=ARM 3=GPM	YES	YES
28	Construction Loan	1=Yes 2=No	YES	YES
29	Amortization Term	998=Non-Amortizing Loan 999=Not Available	YES	YES
30[3]	Lender Institution		YES	YES

#	Field Description	Values	Census Tract File	National File
31[3]	Lender City		YES	YES
32[3]	Lender State		YES	YES
33	Type of Seller Institution	1=Mortgage Company 2=SAIF Insured Depository Institution 3=BIF Insured Depository Institution 4=NCUA Insured Credit Union 5=Other	NO	NO
34	Government Insurance	1=Yes 2=No 3=FHA Risk Sharing 9=Not Available	YES	NO
35	FHA Risk Share Percent		YES	YES
36	Acquisition Type	1=Cash 2=Swap 3=Other 4=Credit Enhancement 5=Bond/Debt Purchased 6=REMIC 7=Reinsurance 8=Risk Sharing 9=REIT	YES	YES
37	GSE Real Estate Owned	1=Yes 2=No 3=Not Available	YES	YES
38	Public Subsidy Program	1=Federal only 2=State or Local only 3=Other/Private Subsidy only 4=Federal and State or Local 5=Federal and Other 6=State or Local and Other 7=Federal, State or Local and Other 9=Data Not Provided	YES	YES
39	Total Number of Units		YES	NO
40[2]	Special Affordable - 45 Percent	0=Missing or Not Applicable	YES	NO

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#	Field Description	Values	Census Tract File	National File
41[2]	Special Affordable - 55 Percent	0=Missing or Not Applicable	YES	NO
42	Fannie Mae Exclusions	1=Excluded from Goal Reporting	YES	YES
43[3]	Geographically Targeted Indicator	1=Yes 2=No 9=Not Applicable	NO, Added Field	NO, Added Field

[1] Different random numbers on tract and national files

[2] Not applicable to 1996 and beyond data sets.

[3] Not applicable to 1993-1995 data sets.

Matrix E.3

GSE Multifamily Mortgage Data
Unit-Class Level
Proprietary Information/Public-Use Data

#	Field Description	Values	Census Tract File	National File
0	Agency Flag		YES	NO
1	Loan Number		YES	Yes, but recode as a Random Number[1]
44	Unit Type XX-Number of Bedrooms		YES	YES, but recode as: 1=0-1 Bedroom 2= 2 or more Bedrooms
45	Unit Type XX-Number of Units		YES	NO
46	Unit Type XX-Average Rent Level		YES	YES
47	Unit Type XX-Average Rent Plus Utilities		YES	YES
48	Unit Type XX-Affordability Level		YES	YES, but recode as: 1=0- <=50% 2=50- <=60% 3=60- <=80% 4=80- <=100% 5= > 100% 9=Not Available
49	Unit Type XX-Tenant Income Indicator	0=No or Not Provided 1=Yes	YES	NO

[1] This number will match the property level random number on the national file.

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Federal Register

Thursday,
March 9, 2000

Part III

Department of Defense

Department of the Army, Corps of Engineers

Final Notice of Issuance and Modification of Nationwide Permits; Notice

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Final Notice of Issuance and Modification of Nationwide Permits

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final notice.

SUMMARY: The Corps of Engineers (Corps) is issuing 5 new Nationwide Permits (NWPs) and modifying 6 existing NWPs to replace NWP 26 which expires on June 5, 2000. The Corps is also modifying nine NWP general conditions and adding two new NWP general conditions. The new NWP general conditions will increase protection of designated critical resource waters and waters of the United States within 100-year floodplains. In December 1996, the Corps decided to replace NWP 26, which authorizes discharges of dredged or fill material into headwaters and isolated waters of the United States, with activity-specific NWPs. The new and modified NWPs authorize many of the same activities that NWP 26 authorized, but the new and modified NWPs are activity-specific, with terms and conditions to ensure that these activities result in minimal adverse effects on the aquatic environment. The new and modified NWPs will substantially increase protection of the aquatic environment, while efficiently authorizing activities with minimal adverse effects on the aquatic environment. The maximum acreage limits of most of the new and modified NWPs is ½ acre. Most of the new and modified NWPs require notification to the district engineer for activities that result in the loss of greater than 1/10 acre of waters of the United States. This notice also constitutes the Corps application to States, Tribes, and the Environmental Protection Agency (EPA) for Section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency determinations. These agencies have 90 days to determine if the new and modified NWPs meet state or Tribal water quality standards and are consistent with state coastal zone management plans.

DATES: The new and modified NWPs and general conditions will become effective on June 5, 2000. The expiration date for NWP 26 is June 5, 2000.

ADDRESSES: HQUSACE, ATTN: CECW–OR, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson or Mr. Sam Collinson at (202) 761–0199 or access the Corps of Engineers Regulatory Home Page at: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.

SUPPLEMENTARY INFORMATION:

Background

In the December 13, 1996, issue of the **Federal Register** (61 FR 65874) the Corps reissued NWP 26 for a period of two years and announced its intention to replace NWP 26 with activity-specific NWPs. NWP 26 authorizes discharges of dredged or fill material into headwaters and isolated waters, provided the discharge does not result in the loss of greater than 3 acres of waters of the United States or 500 linear feet of stream bed. Headwaters are non-tidal streams, lakes, and impoundments that are part of a surface tributary system to interstate or navigable waters of the United States with an average annual flow of less than 5 cubic feet per second. Isolated waters are non-tidal waters of the United States that are not part of a surface tributary system to interstate or navigable waters and are not adjacent to such surface tributary systems to interstate or navigable waters.

In the July 1, 1998, issue of the **Federal Register** (63 FR 36040) the Corps published its initial proposal to replace NWP 26, including 6 new NWPs, modifying 6 existing NWPs, modifying 6 NWP general conditions, and adding one new NWP general condition. In the October 14, 1998, issue of the **Federal Register** (63 FR 55095), the Corps published a supplementary proposal to limit the use of the proposed new and modified NWPs in 100-year floodplains, impaired waters, and designated critical resource waters. In the October 14, 1998, **Federal Register** notice, the Corps also announced the withdrawal of the proposed NWP for master planned development activities and the extension of the expiration date of NWP 26 to September 15, 1999. The Corps also announced, in the October 14, 1998, **Federal Register** notice, its intent to solicit additional comments on the proposed new and modified NWPs and regional conditions proposed by Corps districts.

As a result of the comments received in response to the July 1, 1998, and October 14, 1998, **Federal Register** notices, the Corps made changes to the proposed NWPs and general conditions. The Corps also modified and reproposed the three new NWP general conditions to limit the use of NWPs in 100-year floodplains, impaired waters, and designated critical resource waters. The draft NWPs and general conditions were published in the July 21, 1999, issue of the **Federal Register** (64 FR 39252) for a 45-day comment period. Concurrent with this **Federal Register** notice, Corps districts proposed the latest drafts of their proposed regional conditions for the new and modified NWPs. In the September 3, 1999, issue of the **Federal Register** (64 FR 48386), the Corps announced that the comment period for the draft NWPs and general conditions was extended an additional 30 days to provide a 75-day comment period. The comment period for the July 21, 1999, **Federal Register** notice ended on October 7, 1999. In the September 3, 1999, **Federal Register** notice, the Corps also announced that the expiration date of NWP 26 was extended to January 5, 2000.

As a result of the number of substantial comments received in response to the July 21, 1999, **Federal Register** notice and the need for additional time to review those comments and develop the final NWPs and general conditions, the Corps issued another **Federal Register** notice on December 15, 1999 (64 FR 69994). This **Federal Register** notice announced a revised expiration date for NWP 26 and the process for accepting NWP 26 PCNs. The expiration date for NWP 26 was extended to April 14, 2000.

Since the schedule published in the December 15, 1999, **Federal Register** notice has changed, we are extending the expiration date of NWP 26 to June 5, 2000. NWP 26 PCNs submitted on or before March 9, 2000, (whether required or not) will be reviewed under the existing terms and conditions of NWPs. If those activities are authorized by NWP 26, their authorizations will be valid until February 11, 2002. If the activity is under construction or under contract prior to February 11, 2002, the permittee will have 12 additional months to complete the authorized activity. NWP 26 PCNs for activities that require notification which are submitted after March 9, 2000, will be reviewed under the new and modified NWPs or other types of DA authorization, such as individual permits. NWP 26 activities that do not require a PCN are authorized by NWP 26 until June 5, 2000. For those NWP 26 activities that do not require notification, the permittee has 12 months to complete the work if construction begins or is under contract before June 5, 2000.

The terms and limits of the new and modified NWPs are intended to authorize activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. Most of the new NWPs authorize activities in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters. The

acreage limit for most of the new and modified NWPs is ½ acre. For the new and modified NWPs, the Corps has established pre-construction notification (PCN) thresholds to ensure that any activity that potentially may have more than minimal adverse effects on the aquatic environment is reviewed by a district engineer on a case-by-case basis. Most of the new NWPs require submission of a PCN for discharges of dredged or fill material resulting in the loss of greater than 1/10 acre of waters of the United States. Regional conditions may be added to the NWPs by division engineers to lower notification thresholds.

The new and modified NWPs issued today will become effective on June 5, 2000. This **Federal Register** notice begins the 90-day Clean Water Act Section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency determination processes. Because of the changes to the proposed new and modified NWPs, including the general conditions, we have increased the normal 60-day WQC and CZMA consistency determination processes to 90 days. During this 90-day period, Corps divisions and districts will finalize their regional conditions for the new and modified NWPs.

Discussion of Public Comments

I. Overview

In response to the July 21, 1999, **Federal Register** notice, we received over 1,700 comments. We reviewed and fully considered all of these comments. Most of the commenters expressed opposition to the proposed NWPs, but a few commenters indicated support for these NWPs. One commenter stated that NWP 26 should be retained without any changes. A number of commenters support the current NWP program, because data collected by the Corps during Fiscal Year (FY) 1997 indicates that there are net gains in aquatic resources because of the Corps mitigation requirements. These commenters indicated that this net gain demonstrates that the current NWP program results only in minimal adverse effects on the aquatic environment.

After considering the comments received in response to the July 21, 1999, **Federal Register** notice, we have made several important changes to the new and modified NWPs. For most of these NWPs, we have established a ½ acre limit. Notification to the district engineer will be required for most activities that result in the loss of greater than 1/10 acre of waters of the United States. For NWPs 39, 40, 42, and 43, we have imposed a 300 linear foot limit for filling and excavating stream beds. We have also increased the notification review period to 45 days. We have revised nine general conditions and added two new general conditions. The new NWP general conditions limit activities in designated critical resource waters and fills in waters of the United States within 100-year floodplains. All above-grade fill under NWPs 29, 39, 40, 42, 43, and 44 is prohibited within the FEMA-mapped 100-year floodplain below the headwaters of any stream. Within the headwaters, above-grade fill is prohibited within the FEMA-mapped regulatory floodway, and any above-grade fill in the flood fringe must meet FEMA standards.

These new restrictions on use of the NWPs will substantially increase the protection of the Nation's aquatic environment. These revised NWPs continue a trend by the Corps of Engineers of enhancing the protection of the aquatic environment through the NWP program. In 1977 the predecessor to NWP 26 authorized unlimited fill in headwaters and isolated waters without any notification of the Corps. In 1984 the Corps established a maximum project specific impact limit of 10 acres and a notification of the Corps for any impact greater than 1 acre. In 1996, we reduced these project specific limits to 3 acres maximum and ⅓ acre for notification of the Corps. To further ensure that the NWP program properly protects the aquatic environment, the Corps is conducting a Programmatic Environmental Impact Statement, which will be completed in early 2001. To ensure full protection of endangered species, the Corps is formally consulting with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the NWP program.

All of these substantial improvements will increase costs to applicants to some degree and will increase the funding needed by the Corps to maintain our current level of service to the public. Based on a report prepared by the Corps Institute for Water Resources (IWR) in response to the Corps FY 2000 Appropriations Act, the changes to the NWP program announced today will increase direct costs for permit applicants by about $20 million per year. Further, based on the IWR report, the Corps would need about $6 million in additional funding to maintain current levels of service to the public. We believe the changes are necessary to ensure the statutory requirement that general permits, including NWPs, will have no more than minimal adverse effects on the aquatic environment.

II. General Comments

In the following discussion, where the comments and responses were the same as for the July 21, 1999, **Federal Register** notice, we referred to the July 21, 1999, **Federal Register** notice instead of repeating those responses.

Many commenters objected to the proposed NWPs for the following reasons: (1) The proposed NWPs are too complex; (2) the proposed NWPs are contrary to the Congressional intent of Section 404(e) of the Clean Water Act; (3) the proposed NWPs are contrary to the Administration's 1993 Wetlands Plan, which states that Federal regulatory programs should be fair, flexible, and effective; (4) the proposed NWPs are contrary to the 1998 Clean Water Action Plan, which states that duplication between Federal, state, and local agencies and Tribal governments should be reduced wherever possible; (5) the conditions of these NWPs will cause many activities with minimal adverse effects on the aquatic environment to be processed as individual permits; and (6) these NWPs will result in unnecessary and costly burdens on the regulated public, increase delays, and increase the Corps workload without providing any benefits.

We have reduced the complexity of these NWPs as much as possible by making the scope of applicable waters for most of the new NWPs the same and establishing similar PCN thresholds. In addition, we have eliminated the indexed acreage limits from NWPs 39 and 40 and established a ½ acre limit for these NWPs. However, some complexity is unavoidable because different activities in waters of the United States do not have the same effects on the aquatic environment and each NWP must have different conditions to address those dissimilar impacts. The new and modified NWPs are conditioned to ensure that only those activities that have minimal adverse effects on the aquatic environment are authorized by these permits.

The new and modified NWPs are not contrary to Section 404(e) of the Clean Water Act, because each NWP authorizes activities that are similar in nature, with terms and conditions to ensure that those NWPs authorize only activities with minimal adverse effects on the aquatic environment. These NWPs still provide an expedited authorization process when compared to the standard permit process, because the district engineer must respond to the applicant within 45 days of the receipt date for a complete preconstruction

notification (PCN). The 45-day PCN review period is shorter than the average evaluation time for individual permits, which was 100 days in FY 1999.

The new and modified NWPs comply with the President's 1993 Wetlands Plan, by allowing the Corps regulatory program to continue to provide effective protection of wetlands and other aquatic resources and avoid unnecessary impacts to private property, the regulated public, and the aquatic environment. The new and modified NWPs, including the new and modified general conditions, will more clearly address individual and cumulative adverse effects on the aquatic environment and ensure that those adverse effects are minimal. The new and modified NWPs address specific applicant group needs and provide more predictability and consistency to the regulated public. During the development of these NWPs, we recognized the concerns of the natural resource agencies and environmental interest groups for potential adverse effects on the aquatic environment resulting from activities authorized by these NWPs and the regulated public's need for certainty and flexibility in the NWP program.

Although certain aspects of the new and modified NWPs duplicate existing Federal, state, and local agency programs, such duplication is not contrary to the 1998 Clean Water Action Plan because it provides additional protection for the aquatic environment. While some state and local governments may address some of the same issues that are addressed by the NWPs and general conditions, there are many areas of the country where those issues are not addressed. Therefore, we believe it is necessary to add certain conditions to the NWPs to address potential adverse effects to the aquatic environment. For example, General Condition 9 requires a water quality management plan for certain NWP activities, unless the state or Tribal Section 401 agency requires an adequate water quality management plan. If the state or Tribe does not adequately address impacts to water quality through its water quality certification process, the district engineer can require additional measures such as stormwater management facilities and vegetated buffers to protect water quality. There are circumstances where the Corps needs to consider more stringent NWP requirements to ensure that the adverse effects to the aquatic environment are minimal, individually and cumulatively.

We agree that the terms and conditions of the new and modified NWPs may cause some activities with minimal adverse effects on the aquatic environment to be subject to the individual permit process. It is important to note that aquatic resource functions and values differ greatly across the country. When developing NWPs that have national applicability, there will be many parts of the country where the terms and limits of the NWPs will not authorize some activities that have minimal adverse effects on the aquatic environment. In these areas, district engineers can issue regional general permits in the future to provide expedited authorization for categories of activities with minimal adverse effects on the aquatic environment.

However, for six months after the publication date of the new and modified NWPs, district engineers will not issue regional general permits or letters of permission (LOPs) that explicitly authorize the same activities as the new and modified NWPs. This six month period will allow Corps districts to assess how effectively the new and modified NWPs authorize activities with minimal adverse effects on the aquatic environment, individually and cumulatively.

As required by the Energy and Water Development Appropriations Act, 2000, we have conducted a study of the workload and compliance costs of the NWPs, including the new general conditions, proposed in the July 21, 1999, **Federal Register** notice. The report for this study was finalized in January 2000. This report is available on the Internet at the Corps headquarters regulatory home page.

The workload and compliance costs study determined that the proposal published in the July 21, 1999, **Federal Register** would increase the number of standard individual permit applications received by the Corps by 4,429 per year. This and other workload increases would result in direct compliance costs incurred by the regulated public by an estimated $46 million annually. The study also examined indirect compliance costs (i.e., opportunity costs) of the July 21, 1999, proposal. The indirect compliance costs include the opportunity costs that result from increases in permit processing times and an estimate of foregone development value caused by the vegetated buffer requirement. The study estimates that the processing times for standard permits would steadily increase each year if the July 21, 1999, proposal were to be implemented and Corps budget resources are not increased. Within five years, the average standard permit processing time and number of backlogged permit applications would increase three to four times the levels measured in FY 1998.

The study also examined an alternative replacement NWP package that included lowering the acreage limit of the new and modified NWPs to ½ acre and withdrawing the three proposed new NWP general conditions. The alternative replacement NWP package would result in 40% fewer standard permit applications and 30% less direct compliance costs than the July 21, 1999, proposal would. After five years, the standard permit processing times and permit application backlog would be approximately ½ of that estimated for the proposal published in the July 21, 1999, **Federal Register**.

Many commenters objected to the Corps statement in the July 21, 1999, **Federal Register** notice that NWPs are optional permits, and that if they do not want to comply with the terms and conditions of the NWPs, then they can request an individual permit. Numerous commenters indicated that the new and modified NWPs are likely to result in decreased protection of the aquatic environment because of the higher numbers of individual permits and a greater workload for the Corps that would result if these NWPs were implemented as proposed. Some commenters also stated that the new and modified NWPs would also result in less protection of the aquatic environment because project proponents would have less incentive to build projects with smaller impacts to aquatic resources due to the strict acreage limits, notification requirements, and conditions. In contrast, one commenter said that developers will modify their projects to comply with the new and modified NWPs. Another commenter said that the costs to the Corps and regulated public that are imposed by the new and modified NWPs will be offset by the additional environmental protection provided by those NWPs.

NWPs provide an expedited Corps permit process for activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. The NWPs are conditioned to ensure that only activities with minimal adverse effects are authorized. If a prospective permittee cannot comply with all of the terms and conditions of the NWPs, then he or she can request another form of Department of the Army (DA) authorization, such as a regional general permit or a standard individual permit.

We believe that the terms and conditions of the new and modified NWPs, including the ½ acre limit and 1/10 acre PCN threshold, are substantially more protective of the aquatic environment. The terms and conditions of these NWPs will ensure that only activities with minimal adverse effects on the aquatic environment are authorized by NWPs. Many project proponents will design their projects to comply with the ½ acre limit so that they can qualify for an NWP and receive authorization more quickly than they could through the standard permit process.

Many commenters stated that the new and modified NWPs would cause more than minimal adverse effects on the aquatic environment, individually and cumulatively. A few commenters said that the proposed NWPs do not comply with the requirement that general permits authorize only activities that are similar in nature. A number of commenters objected to the NWPs, because they provide no opportunity for the public to comment on individual projects.

We have developed terms and conditions for the new and modified NWPs to ensure that they authorize only those activities that result in minimal individual or cumulative adverse effects on the aquatic environment. The new and modified NWPs have PCN thresholds that require prospective permittees to notify district engineers prior to conducting activities that could result in more than minimal adverse effects. Most of the new and modified NWPs require notification to district engineers for discharges resulting in the loss of greater than 1/10 acre of waters of the United States. Division engineers can regionally condition these NWPs to lower notification thresholds, protect high value waters, or add additional restrictions to ensure that authorized activities result only in minimal adverse effects. District engineers will review PCNs on a case-by-case basis to determine if the adverse effects of the proposed work are minimal. If the adverse effects of a particular activity are more than minimal, the district engineer can either add conditions to the NWP authorization to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the proposed work.

Each of the new and modified NWPs authorizes activities that are similar in nature, in full compliance with section 404(e) of the Clean Water Act. This issue was discussed in detail in the July 21, 1999, **Federal Register** notice (64 FR 39263), and we have not changed our position on this matter.

The intent of general permits, including NWPs, is to efficiently authorize activities that have minimal adverse effects on the aquatic environment. These activities are usually non-controversial, and would generate few or no comments from the public if they were subject to the standard permit process. Conducting full public interest reviews for activities with minimal adverse effects on the aquatic environment would substantially increase the Corps workload with little or no added value for the aquatic environment.

A large number of commenters objected to the proposed NWPs, stating that the new and modified NWPs would result in significant wetland losses. Many commenters said that the new and modified NWPs would undermine the Administration's goal of net gain in wetland acreage stated in the Clean Water Action Plan.

The new and modified NWPs will not result in significant losses of wetlands because they are conditioned to require prospective permittees to avoid and minimize impacts to waters of the United States on-site to the maximum extent practicable (see General Condition 19). In addition, the ½ acre limit will substantially reduce wetland losses. Compensatory mitigation is often required for activities that require notification to the district engineer, which offset losses of wetlands and other aquatic habitats so that significant losses of wetlands do not occur as a result of the NWP program.

As discussed in the July 21, 1999, **Federal Register** notice, the NWP program supports the Administration's goal of no net loss and is not contrary to the goals of the Clean Water Action Plan.

Several commenters objected to the proposed NWPs, stating that the NWPs place too much reliance on the assertion of discretionary authority by district engineers. They said that this process does not provide adequate protection of the aquatic environment. Another commenter stated that the proposed NWPs are inappropriately based on the intent of the prospective permittee, instead of potential impacts to aquatic resources. One commenter indicated that there is too much overlap between the new and modified NWPs, which would be confusing to permit applicants.

We disagree with these commenters, because the notification process allows case-by-case review of those activities that have the potential for more than minimal adverse effects on the aquatic environment. If the adverse effects of the proposed activity are more than minimal, then the district engineer can either add special conditions to the NWP authorization to ensure that the activity results in minimal adverse effects or exercise discretionary authority and require an individual permit. This process provides substantial protection for the aquatic environment.

The new and modified NWPs are activity-specific to satisfy the requirements of section 404(e) of the Clean Water Act. These NWPs address impacts to the aquatic environment, because they are limited to certain types of waters and are conditioned to ensure that the adverse effects resulting from the authorized work are minimal, individually and cumulatively. Since these NWPs are activity-specific, they have to reflect specific categories of work that are conducted by individuals of certain occupations.

Although there is some overlap between the activities authorized by the new and modified NWPs, such redundancy is necessary because our intent was to develop NWPs that authorize single and complete projects generally without having to resort to using multiple NWPs. For instance, NWP 39 authorizes most features of residential, commercial, or institutional developments, including road crossings and stormwater management facilities.

Several commenters stated that the NWPs should only authorize activities that are water dependent. One of these commenters said that limiting the NWPs only to water dependent activities would result in a regulatory program that is easier to administer and result in wetland gains. Some commenters indicated that the proposed NWPs do not comply with the Section 404(b)(1) guidelines.

We addressed the issue of water dependency in the preamble of the July 21, 1999, **Federal Register** notice and have not changed our position on this issue. The new and modified NWPs comply fully with the requirements for general permits in the Section 404(b)(1) guidelines (see 40 CFR 230.7).

A few commenters opposed the new and modified NWPs because they said that the Corps has failed to define the term ''minimal effects'' in an understandable or meaningful way. Many commenters stated that the minimal adverse effects criterion for the NWPs is too subjective and that an assessment procedure that considers the size of impacts and quality of waters must be used instead.

The term ''minimal effect'' as it is used in the context of general permits,

including NWPs, cannot be simply defined. The terms and conditions of general permits are established so that those permits authorize most activities that result in minimal adverse effects on the aquatic environment. Preconstruction notifications are an important mechanism to ensure compliance with the minimal adverse effect requirement. Case-specific special conditions and regional general conditions are also important for addressing site-specific and regional concerns for the aquatic environment and ensuring that the NWPs authorize only activities with minimal adverse effects. For activities that require notification to the district engineer, the minimal adverse effects determination requires consideration of site-specific factors, such as the quality of waters that may be impacted by the proposed work, the functions and values of those waters, the geographic setting of the proposed work, and other factors. The minimal adverse effects criterion must be subjective, due to the complexity of the analysis required.

Two commenters suggested issuing the new NWPs with an expiration date of February 11, 2002, so that these NWPs will expire on the same day as the current NWPs. One commenter said that the new NWPs should be reevaluated when the current NWPs are reevaluated to determine if the use of all NWPs will result in more than minimal impacts. Two commenters recommended allowing NWP 26 to expire in January 2000 and not issuing the new NWPs until the next NWP reissuance in 2002. In the interim, individual permits would be required for activities that do not qualify for any of the current NWPs.

The new and modified NWPs issued today will expire on June 5, 2005 (i.e., five years from their effective date). However, when the current NWPs are proposed for reissuance in 2002, the new and modified NWPs are likely to be part of that proposal, so that all of the NWPs will be on the same five year cycle for review. We do not agree with the third comment of the previous paragraph. Allowing NWP 26 to expire prior to the effective date of the new and modified NWPs would be unfair to the regulated public.

Several commenters requested that the expiration date for NWP 26 should be extended to the expiration date of the current NWPs to ensure that NWP 26 is available until the effective date of the new and modified NWPs.

We do not agree that it is necessary to extend the expiration date of NWP 26 to February 11, 2002, because the new and modified NWPs will become effective on June 5, 2000. Keeping NWP 26 in place while the new and modified NWPs are effective would be contrary to the Corps goal of replacing NWP 26 with activity-specific NWPs.

One commenter suggested that the Corps clarify in this **Federal Register** notice that activities authorized by NWP 26 prior to the expiration date will continue to be authorized by NWP 26 for 12 months, provided the permittee has commenced construction or is under contract to commence construction. Another commenter recommended changing the 12-month grandfather provision for the NWPs to 24 months to provide adequate time for the completion of transportation projects.

A permittee who receives an NWP 26 authorization prior to the expiration date will have up to 12 months to complete the authorized activity, provided the permittee commences construction, or is under contract to commence construction, before the date NWP 26 expires (see 33 CFR 330.6(b)). Except as indicated below, this provision applies to all NWP authorizations unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the NWP authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5(c) or (d). We do not agree that it is necessary to increase the time period for the grandfathering provision from 12 months to 24 months. However, anyone who submitted a NWP 26 PCN on or before March 9, 2000, will have until February 11, 2003, to complete the work, provided the permittee receives an NWP 26 verification and has commenced construction or signed a construction contract prior to February 11, 2002.

Jurisdictional Issues

In response to the July 21, 1999, **Federal Register** notice, we received many comments concerning the scope of the Corps regulatory authority. These comments addressed excavation activities in waters of the United States and whether ephemeral streams, drainage ditches, and certain other categories of waterbodies are waters of the United States. Today's action addresses only NWPs, and in no way affects or alters the geographic or activities-based jurisdiction of the CWA nor is it intended to create new policy related to such jurisdiction.

Many commenters said that the Corps is ignoring recent court decisions by including excavation activities as regulated activities in the text of the new and modified NWPs. These commenters cited the recent decision by the United States Court of Appeals for the District of Columbia which upheld the United States District Court for the District of Columbia's decision in the *American Mining Congress* v. *Corps of Engineers* lawsuit. This lawsuit challenged the Corps and EPA's revised definition of ''discharge of dredged material'' that was promulgated on August 25, 1993 (58 FR 45008). The revised definition of ''discharge of dredged material'' was overturned because the District Court held that the rule was outside of the agencies' statutory authority and contrary to the intent of Congress by asserting Clean Water Act jurisdiction over activities where the only discharge associated with the activity is ''incidental fallback.'' These commenters requested that the Corps remove all references to excavation activities from the new and modified NWPs. Two commenters stated that the reference to excavation activities in the new and modified NWPs requires project proponents to submit a notification to the Corps to determine if a Corps permit is required. One commenter said that the final NWPs should contain guidance that explains when excavation is a regulated activity. This commenter also recommended that the Corps clarify how excavation activities are included in the calculation of acreage loss of waters of the United States, to determine if a particular activity exceeds PCN thresholds or NWP acreage limits.

The agencies revised their regulations on May 10, 1999, to respond to the results of the American Mining Congress lawsuit (64 FR 25120). It is important to recognize that not all excavation activities in waters of the United States are conducted so that only incidental fallback occurs. Excavation activities that result in the redeposit of dredged material into waters of the United States other than incidental fallback require a Section 404 permit. For example, excavated material may be temporarily stockpiled in waters of the United States before it is removed. Excavation activities that result only in discharges identified by the Corps as ''incidental fallback'' do not require a Section 404 permit. However, all excavation activities in Section 10 navigable waters require Corps permits under section 10 of the Rivers and Harbors Act of 1899. We have retained the excavation language in the new and modified NWPs and the definition of ''loss of waters of the United States'' because some excavation activities in Section 404 only waters of the United States result in discharges that still

require a Section 404 permit. These activities may be authorized by NWPs. NWPs issued under the Corps Section 10 authority also authorize excavation activities in navigable waters of the United States. No permit is required for excavation activities that do not meet the definition of discharge of dredged or fill material. As with any activity in waters of the United States, a landowner who is uncertain whether their activity needs a permit may contact the Corps.

Two commenters noted that a statement in the July 21, 1999, **Federal Register** notice (64 FR 39276) concerning excavation activities is inaccurate and misleading. This statement said that excavation activities that result in the replacement of an aquatic area with dry land or change the bottom elevation of a waterbody require a Section 404 permit. These commenters said that this statement is actually the definition of ''fill material'' and that excavation cannot, by itself, result in the replacement of an aquatic area with dry land or change the bottom elevation of a waterbody.

We agree that the statement in the **Federal Register** is inaccurate and have included clarification concerning when excavation activities require a Section 404 and/or a Section 10 permit from the Corps (see the above discussion). Excavation activities can change the bottom elevation of a waterbody by removing material and increasing the depth of the waterbody. Increasing the depth of a waterbody without associated discharges of dredged material other than incidental fallback does not require a Section 404 permit, but a Section 10 permit would be required if the activity is in Section 10 waters. However, an excavation activity that involves redeposit of dredged material into waters of the United States other than incidental fallback or involves the discharge of fill material that increases the bottom elevation of a waterbody or creates dry land requires a Section 404 permit (unless the activity qualifies for a Section 404(f) exemption).

A number of commenters stated that the Corps does not have authority to regulate discharges into ephemeral streams because these watercourses, by definition, contain water only briefly and therefore are not waters of the United States. One of these commenters noted that 33 CFR 328.3 includes intermittent streams, but does not include ephemeral streams. A few commenters remarked that the Corps has not explained how an ordinary water mark can be present in a watercourse that has water flow only during a short time after rain events. These commenters assert that under ordinary circumstances, ephemeral watercourses do not have flowing water and cannot develop an ordinary high water mark (OHWM). They said that the Corps needs to define what constitutes an ''ordinary flow'' in an ephemeral watercourse that establishes an OHWM and what indicators are to be used to determine the presence and location of the OHWM. In addition, these commenters stated that the Corps cannot use peak flows and flood stages in lieu of ordinary flows and the Corps cannot use cut banks, shelving, or debris that is influenced only by peak flows or flooding.

An ephemeral stream is a water of the United States, provided it has an OHWM. An ephemeral stream that does not have an OHWM is not a water of the United States. The frequency and duration at which water must be present to develop an OHWM has not been established for the Corps regulatory program. District engineers use their judgement on a case-by-case basis to determine whether an OHWM is present. The criteria used to identify an OHWM are listed in 33 CFR 328.3(e).

Several commenters said that the Corps can only exercise jurisdictional authority over those ephemeral waters that are tributaries to waters of United States. These commenters said that the low frequency of water flows in these watercourses requires the Corps to define criteria and circumstances to determine whether ephemeral watercourses are tributaries to waters of the United States. Some commenters also stated that the Corps has not demonstrated how ephemeral streams have any nexus to interstate commerce or how discharges of dredged or fill material into those watercourses would affect interstate commerce.

We agree that ephemeral streams that are tributary to other waters of the United States are also waters of the United States, as long as they possess an OHWM. The upstream limit of waters of the United States is the point where the OHWM is no longer perceptible (see 51 FR 41217). Ephemeral streams that are part of an interstate surface tributary system are waters of the United States, because they are an integral part of that surface tributary system, which supports interstate commerce.

Three commenters stated that the proposed NWPs illegally assert jurisdiction over drainage ditches. Three commenters objected to a statement in the July 21, 1999, **Federal Register** notice that drainage ditches constructed in waters of the United States remain waters of the United States. These commenters said that if a drainage ditch converts a water of United States to a non-jurisdictional upland, the drainage ditch would not be a water of United States unless the area remains a wetland or other type of water of United States. These commenters also objected to the Corps assertion that non-tidal drainage ditches are waters of the United States if they extend the OHWM of an existing water of the United States. They said that this position is contrary to preamble to November 13, 1986, final rule for the Corps regulatory program (51 FR 41217) and that this change requires justification. One commenter requested that the Corps clarify whether the entire ditch becomes jurisdictional if the OHWM becomes extended within the ditch or whether jurisdiction is extended only to that portion of the ditch that develops an OHWM. Two commenters asked for clarification whether a drainage ditch that runs through a series of uplands and waters of the United States is jurisdictional. One commenter asked how an OHWM that develops within a drainage ditch would be determined to be due to ordinary flows, not peak flows or flooding.

A drainage ditch constructed in a stream, wetland, or other water of the United States remains a water of the United States, provided an OHWM is still present. Since drainage ditches constructed in waters of the United States are constructed either by channelizing a stream or excavating the substrate to improve drainage, it is unlikely that the drainage ditches will become dry land unless the hydrology is removed by some other action. District engineers will determine, on a case-by-case basis, whether a particular area is a water of the United States. If the construction of a drainage ditch has legally converted the entire area to dry land, then the area drained is not a water of the United States, however, in most cases the drainage ditch would remain a water of the United States.

The statement that non-tidal drainage ditches are waters of the United States if they extend the OHWM of an existing water of the United States is consistent with the final rule published in the November 13, 1986, **Federal Register** and applies to ditches constructed in waters or that connect waters. Nothing in the NWP notice was intended to change the November 13, 1986, **Federal Register** notice which states that drainage ditches constructed entirely in upland areas generally are not considered to be waters of the United States.

Drainage ditches constructed in uplands that connect two waters of the United States may be considered waters of the United States if those ditches

constitute a surface water connection between those two waters of the United States. As previously noted, drainage ditches constructed entirely in uplands generally are not considered to be waters of the United States. District engineers will use the criteria at 33 CFR 328.3(e) to determine the presence and extent of an OHWM that may have developed in a drainage ditch.

One commenter stated that the July 21, 1999, **Federal Register** notice incorrectly asserts jurisdiction over farmed wetlands by considering them to be waters of the United States and the Corps does not have authority to require permits for discharges into these areas. Another commenter said that the Corps does not have the authority to regulate activities in isolated wetlands. Two commenters indicated that the Corps contradicts its regulations concerning the construction and maintenance of stormwater management facilities. These commenters assert that the Corps regulations published in the November 13, 1986, **Federal Register** state that detention and first flush basins are generally not considered waters of the United States. One commenter requested clear definitions of the terms ''waters of the United States,'' ''navigable waters,'' and ''navigable waters of the United States.''

Farmed wetlands as defined under the Food Security Act are waters of the United States provided they meet the criteria at 33 CFR 328.3. In addition, those criteria further provide that prior converted croplands are not waters of the United States. Isolated wetlands are waters of the United States, provided they meet the criteria at 33 CFR 328.3. (Within the Fourth Circuit, isolated waters must be shown to have an actual connection to interstate or foreign commerce.) Stormwater management facilities constructed in waters of the United States may, under certain circumstances, be considered waters of the United States. The Corps has the discretion to determine on a case-by-case basis whether or not a particular waterbody is a water of the United States (see 51 FR 41217). The term ''waters of the United States'' is defined at 33 CFR 328.3 and refers to the Corps Section 404 jurisdiction. The term ''navigable waters'' as used in Section 404 of the Clean Water Act has the same meaning as ''waters of the United States.'' The term ''navigable waters of the United States'' is defined at 33 CFR part 329 and refers to the Corps Section 10 jurisdiction. None of these definitions were changed by the proposed NWPs or these final NWPs.

Procedural Comments

Many commenters stated that the Corps was required to hold public hearings on the draft NWPs proposed in the July 21, 1999, **Federal Register** notice. Some of these commenters said that the draft NWPs, especially the three proposed new NWP general conditions, represent a substantial change from the proposed NWPs published in the July 1, 1998, **Federal Register** notice and that these changes warrant an additional public hearing. Numerous commenters stated that the 75-day comment period was inadequate to thoroughly review and comment on the July 21, 1999, **Federal Register** notice. Some of these commenters said that the comment period should be extended because many districts did not post their draft regional conditions on their Internet home pages quickly enough.

We believe that we have fully complied with the public hearing requirements of the Clean Water Act. After the publication of the July 1, 1998, **Federal Register** notice, public hearings on the proposed new and modified NWPs were held across the country, including a public hearing in Washington, DC on August 19, 1998. The proposal published in the July 21, 1999, **Federal Register** was a modification of the original July 1, 1998, proposal to replace NWP 26 with activity-specific NWPs.

The 75-day comment period for the July 21, 1999, **Federal Register** notice provided adequate time for the public to review and comment on the draft NWPs. Within one week of the publication of the July 21, 1999, **Federal Register** notice, 31 out of 38 districts had posted their draft regional conditions on their Internet home pages, which allowed the public sufficient time to consider how the regional conditioning process affected the proposed new and modified NWPs. All Corps districts had posted their draft regional conditions on their Internet home pages by September 3, 1999.

A large number of commenters said that the Corps has completely ignored the economic and workload implications of the new and modified NWPs and general conditions proposed in the July 21, 1999, **Federal Register** notice. These commenters indicated that the economic impacts of this proposal would be substantial. Many commenters stated that the new and modified NWPs should not be issued or implemented until an economic and workload analysis study is completed.

As required by the Energy and Water Development Appropriations Act, 2000, we have prepared, through the Institute for Water Resources (IWR), a study of the workload and compliance costs that would be incurred by the July 21, 1999, proposal. The study report will be available on the Internet at the Corps headquarters regulatory home page. This study demonstrated that the proposal published in the July 21, 1999, **Federal Register** would result in substantial increases in workload and costs to the Corps and the regulated public. The proposed new and modified NWPs, including the three proposed general conditions, would result in a 50% increase in the number of standard permit applications received by the Corps each year. The proposed new and modified NWP package would increase the Corps costs for processing permit applications at the current levels of service by $11.5 million annually, nearly a 15% increase over FY 1998 program funding. In addition, the July 21, 1999, proposal would also increase the direct compliance costs incurred by the regulated public by $46 million annually. In contrast, the modifications to the new and modified NWPs issued today (*i.e.,* the ½ acre limit and the revised floodplain condition) would result in impacts very similar to the IWR estimate for a ½ acre approach to the NWPs. That IWR estimate was 40% fewer standard permit applications than the July 21, 1999, proposal and 30% less in direct compliance costs. It is also important to note that the modified NWPs being issued today will protect the aquatic environment substantially better than the July 21, 1999, proposal would. These final NWPs are also less complex than the proposed NWPs, which will assist the regulated public.

Many commenters stated that the proposed new and modified NWPs, including the proposed general conditions, violate the Administrative Procedures Act (APA). These commenters said that the Corps has failed to provide an adequate administrative record and failed to demonstrate that the proposed acreage limits and other restrictions are necessary to provide protection for the aquatic environment. Some of these commenters stated that the Corps must provide an environmental basis for the acreage limits of the new and modified NWPs. Several commenters said that the proposal to issue new and modified NWPs to replace NWP 26 falls under the jurisdiction of the APA, because these NWPs are an agency statement of general applicability to implement, interpret, or prescribe a law or policy. A number of commenters stated that the proposed NWPs violate the APA because the schedule published in the

July 21, 1999, **Federal Register** notice implies that the decision to issue these NWPs and new general conditions was predetermined and the schedule did not include adequate time for the Corps to carefully consider comments received in response to that notice.

The new and modified NWPs issued today comply with Section 404(e), which requires notice and opportunity for public hearing. The Corps notice and comment process is virtually the same as the APA process. We have prepared an adequate administrative record to justify the issuance of these NWPs. In addition, we have fully considered all comments received in response to the July 21, 1999, **Federal Register** notice to determine the terms and conditions for the new and modified NWPs. This included three extensions of the final NWP issuance in order to fully and fairly consider all comments.

The acreage limit for an NWP is established so that the NWP authorizes most activities that result in minimal adverse effects on the aquatic environment, individually or cumulatively. However, since NWPs are issued for national applicability, the terms and conditions of NWPs, including the acreage limits, must be restrictive enough to ensure that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively, across the country. The NWPs also contain notification requirements that provide district engineers with the opportunity to review certain activities to determine if those activities will result in minimal adverse effects on the aquatic environment. Aquatic resource functions and values vary considerably across the country. Therefore, the minimal adverse effects determination by Corps districts is based site-specific or regional criteria.

The acreage limits of the new and modified NWPs do not preclude any proposed activity from qualifying for a DA permit. If a proposed activity does not meet the terms and conditions of an NWP, then that activity could be authorized by other forms of DA permits. Regional general permits may be available to authorize certain activities that have minimal adverse effects on the aquatic environment based on local environmental conditions. The proposed work may also be authorized by individual permits, including letters of permission, if the activity involves more than minimal adverse effects on the aquatic environment.

We recognize that there are specific activities or classes of activities in areas of the country that will result in minimal adverse effects on the aquatic environment, but exceed the acreage limits of the new and modified NWPs. Corps districts can develop regional general permits in the future to authorize these activities.

Several commenters stated that the Corps is obligated to minimize regulatory burdens on small businesses, as required by Small Business Regulatory Enforcement Fairness Act of 1996. Two commenters said that the Corps is not in compliance with the Regulatory Flexibility Act because an ''initial regulatory flexibility analysis'' was not provided in the **Federal Register** notice. One commenter indicated that the Corps must comply with the Congressional Review Act. Another commenter said that the July 21, 1999, proposal to issue new and modified NWPs does not comply with Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' because the Corps has not identified the takings implications of the proposed NWPs.

The new and modified NWPs comply with the Small Business Regulatory Enforcement Fairness Act of 1996 because they provide an expedited authorization for activities in waters of the United States that have minimal adverse effects on the aquatic environment. We are not required to provide an initial regulatory flexibility analysis because we proposed to issue new and modified NWPs, not change our regulations. The Corps believes it is not required to submit the final new and modified NWPs to Congress pursuant to the Congressional Review Act, but as a matter of comity, we will submit the final NWPs to Congress. The new and modified NWPs will not result in the taking of private property because the NWPs provide an expedited authorization process for certain activities in waters of the United States that have minimal individual and cumulative adverse effects on the aquatic environment but require a Corps permit. If a proposed activity does not comply with the terms and conditions of an NWP, then the project proponent can request another form of DA permit, including regional general permits, letters of permission, or individual permits. Therefore, there are no takings implications for these NWPs.

General Terms and Limits of NWPs

One commenter stated that the acreage limits for the new and modified NWPs are too high. One commenter said that the NWPs should not have an acreage limit greater than 1 acre. Other commenters recommended maximum acreage limits of ⅓ acre and ¼ acre. Several commenters suggested higher acreage limits for NWP activities in ephemeral streams located in the western United States. Two commenters said that the NWPs should have lower acreage limits for activities in certain types of wetlands, such as forested wetlands, playas, prairie potholes, vernal pools, kettles, pocosins, and bogs. Two commenters opposed the use of indexed acreage limits.

We have fully considered comments concerning acreage limits for the new and modified NWPs. To simplify the new and modified NWPs and ensure that these NWPs still authorize only activities with minimal individual and cumulative adverse effects on the aquatic environment, all of the new NWPs, except for NWP 41, will have a ½ acre limit. We have not imposed a ½ acre limit on NWP 41 because it only authorizes activities that benefit the aquatic environment. The acreage limits for specific NWPs are discussed in detail in the preamble discussions for each NWP. Division engineers can regionally condition these NWPs to lower acreage limits if there are specific concerns for the aquatic environment in a particular part of the country. We do not agree that there should be higher acreage limits on the NWPs for discharges of dredged or fill material into ephemeral streams in the western states, due to the national scope of the NWPs. However, Corps districts may issue RGPs with larger acreage thresholds in any local situations where they determine that the activity would result in no more than minimal adverse effects, individually or cumulatively. Division engineers can also regionally condition these NWPs to restrict or prohibit their use in certain types of high value waters of the United States. We have eliminated the indexed acreage limits from NWPs 39 and 40 because the simple ½ acre limit is a more effective way to ensure that these NWPs authorize only activities with minimal adverse effects and the vast majority of activities authorized by NWP 26 are below or slightly above ½ acre.

Many commenters indicated that the PCN thresholds for the new and modified NWPs should be ⅓ acre, instead of ¼ acre. These commenters believe the difference between these two notification thresholds is too small to provide any value and that the lower PCN threshold will increase the Corps workload without providing any benefits. One commenter recommended providing more consistency in PCN thresholds for the NWPs. Several commenters stated that PCNs should be

required for all activities authorized by NWPs and one commenter remarked that PCNs should be required for all discharges into special aquatic sites. One commenter said that lower acreage limits for the NWPs should result in fewer PCN requirements, not a lowering of PCN thresholds.

To further ensure that the new NWPs authorize only activities with minimal adverse effects on the aquatic environment, we have established a 1/10 acre PCN threshold for the new NWPs (except for NWP 41) and retained the original PCN thresholds for impacts to open waters, including streams. The notification threshold for NWP 14 has also been lowered to 1/10 acre. The 1/10 acre PCN threshold will result in a workload increase for Corps districts, but we believe that this increase will be minor, since many permittees request written verification of NWP authorizations, even when notification is not required. We believe that the PCN thresholds in the new and modified NWPs are consistent. There are circumstances, such as NWP 39 activities that impact open waters, where we believe it is necessary to review all proposed activities. However, we do not agree that is necessary to require notification for all NWP activities because most minor activities authorized by NWPs result in minimal adverse effects. Division engineers can impose regional conditions on NWPs to lower PCN thresholds in those geographic areas where there is the potential for more than minimal adverse effects on the aquatic environment. We do not agree that lower acreage limits should result in fewer PCN requirements because the notification process is necessary to address activities that might result in more than minimal adverse effects.

Several commenters suggested adding PCN requirements for discharges into ephemeral streams, not just perennial and intermittent streams, because ephemeral streams are important in arid regions. One commenter recommended reducing the 500 linear foot PCN threshold for perennial and intermittent stream impacts to 200 linear feet. One commenter said that PCNs should be required for all discharges into open waters to allow district engineers to determine appropriate vegetated buffer requirements.

Except for those NWPs that require notification for all activities or all discharges of dredged or fill material into open waters, we believe that notification requirements for stream impacts should be limited to perennial and intermittent streams, since discharges of dredged or fill material into ephemeral streams are likely to result in minimal adverse effects. In geographic areas where discharges of dredged or fill material into ephemeral stream beds may result in more than minimal adverse effects on the aquatic environment, division engineers can regionally condition these NWPs to require notification for these activities. For some of the new NWPs, we have replaced the 500 linear foot PCN threshold for stream bed impacts with a 300 linear foot limit. Division engineers can impose regional conditions to require a PCN threshold to address activities that may result in more than minimal adverse effects. With the exception of NWP 39, we do not agree that it is necessary to require notification for all discharges of dredged or fill material into open waters to determine vegetated buffer requirements. Vegetated buffers are not required for all activities authorized by the NWPs. District engineers will determine on a case-by-case basis when it is appropriate to require vegetated buffers next to open waters.

Cumulative Impact Assessment and Data Collection

Many commenters objected to the Corps position stated in the July 21, 1999, **Federal Register** notice that the Corps can monitor only those cumulative adverse effects on the aquatic environment that result from activities permitted by the Corps regulatory program. Some of these commenters said that this position is contrary to the Clean Water Act and recommended that the Corps utilize the definition of cumulative impacts found in the regulations for the National Environment Policy Act (NEPA). Numerous commenters asserted that cumulative impact analysis should include both regulated and unregulated losses of aquatic habitat within a geographic area. One commenter said that cumulative impact analysis should include all activities that affect water quality. Two commenters objected to the Corps statement in the July 21, 1999, **Federal Register** notice that district engineers must have clear, extensive, and unequivocal evidence that activities regulated pursuant to section 404 of the Clean Water Act or section 10 of the Rivers and Harbors Act are causing more than minimal cumulative adverse effects on the aquatic environment, not unregulated activities, before revoking or suspending the use of NWPs. One commenter stated that cumulative impact assessment should consider temporary and permanent losses of waters of the United States in a different manner. This commenter also remarked that the cumulative impact assessment must also consider both losses of waters of the United States and compensatory mitigation to determine the net cumulative adverse effects on the aquatic environment.

The Corps position in the July 21, 1999, **Federal Register** notice concerning cumulative impact assessment is based on the statutory requirements of Section 404(e) of the Clean Water Act. There are no other references to cumulative adverse effects in Section 404 of the Clean Water Act. The requirement for authorized activities to cause no more than minimal adverse effects on the aquatic environment applies only to general permits (including NWPs), not the entire Corps regulatory program. This position is also supported by the regulations for implementing the Section 404(b)(1) guidelines at 40 CFR 230.7. These regulations state that activities authorized by general permits can result only in minimal adverse effects on water quality and the aquatic environment (see 40 CFR 230.7(a)(3)).

The Corps scope of analysis for the purposes of NEPA is discussed in 33 CFR part 325, appendix B. The Corps can only address the impacts of the specific activity that requires a Department of the Army permit and those portions of the activity over which the district engineer has sufficient control and responsibility to warrant Federal review.

The Corps does provide different consideration to temporary and permanent losses of waters of the United States when assessing the adverse effects of regulated activities on the aquatic environment. As discussed in the NWP definition of ''loss of waters of the United States,'' waters of the United States that are temporarily filled, flooded, excavated, or drained, but restored after construction, are not included in the measurement of loss of waters of the United States. Therefore, temporary losses would not be included in the Corps cumulative impact assessment since the affected areas would be restored as waters of the United States. When assessing cumulative adverse effects on the aquatic environment, the Corps also considers compensatory mitigation for losses authorized by NWPs, because compensatory mitigation is often required to offset losses of waters of the United States and ensure that the activities authorized by NWPs have minimal adverse effects. Corps districts assess cumulative impacts on a watershed basis. Attempting to assess cumulative impacts across the nation is not possible, or appropriate.

Two commenters supported the Corps assertion that cumulative impacts must be assessed on a watershed basis. One of these commenters said that watersheds should be defined by the 8-digit watershed cataloging units designated by the U.S. Geological Survey (USGS). Two commenters requested that the Corps develop a method to quantify potential cumulative and indirect impacts that will result from activities authorized by NWPs in a watershed. Two commenters said that district engineers must demonstrate that the use of NWPs in a watershed or geographic area will not result in more than minimal adverse effects on the aquatic environment.

As discussed in the July 1, 1998, **Federal Register** notice, the Corps utilizes the 8-digit hydrological unit codes developed by USGS to identify watersheds for its data collection process. However, district engineers can utilize subwatersheds within these hydrological units when conducting cumulative impact assessments. The Corps does not have the resources to develop a method to quantify potential cumulative and indirect impacts that may result from activities authorized by NWPs. If the division or district engineer determines that the use of NWPs to authorize activities within a particular watershed or geographic area will result in more than minimal individual or cumulative effects on the aquatic environment, then he or she can modify, suspend, or revoke those NWPs in that area (see 33 CFR 330.4). This is a determination that must be made by districts as they administer the Corps regulatory program in specific geographic areas.

Two commenters said that the Corps should analyze the cumulative impacts of the current NWPs and any NWPs that will be proposed in the future before issuing the new and modified NWPs. These commenters recommended that this analysis consider the efficiency of compensatory mitigation. Two commenters objected to the Corps assertion that it cannot make the individual and cumulative adverse effects determination nationally.

When the Corps issues or modifies an NWP, an environmental assessment, a finding of no significant impact (FONSI), and if necessary, an evaluation of compliance with the Section 404(b)(1) guidelines is prepared for each NWP. These items are contained in one document. This document includes an analysis of the cumulative impacts that are expected to occur during the time the NWP is in effect. This analysis also includes estimates of the amount of compensatory mitigation that will be required to offset losses of waters of the United States authorized by the NWP. We maintain our position that an assessment of cumulative adverse effects that result from the use of the NWPs cannot be made at the national level, and that the only technically sound method to conduct this assessment is on a watershed basis, through the district offices. Concurrent with the issuance of the new and modified NWPs and the final decision documents for each of the new and modified NWPs, division engineers will issue supplementary decision documents that address the impacts of the NWPs in Corps districts.

Several commenters said that Corps record-keeping methods are inadequate and that the Corps should issue quarterly public reports on wetland losses and the status of compensatory mitigation. A number of commenters recommended that the Corps establish a data collection system that tracks various types of compensatory mitigation (i.e., creation, restoration, enhancement, preservation) and monitors compliance with the goal of no net loss. Numerous commenters indicated that the Corps needs to commit to stronger monitoring and enforcement efforts.

We do not have the resources to publish quarterly reports on impacts to waters of the United States and compensatory mitigation at this time. The data collection systems for most Corps districts do not currently differentiate between the amounts of compensatory mitigation provided through restoration, enhancement, creation, or preservation. Instead, most districts track the total amount of compensatory mitigation required for Corps permits. The effectiveness of compensatory mitigation efforts is monitored by district engineers on a case-by-case basis to the extent allowed by workload and personnel resources. Therefore, we cannot collect this type of information for all activities. We are committed to strong enforcement and monitoring efforts, but enforcement and compliance efforts are limited to available district resources. The Corps permit evaluation workload must take precedence over enforcement and monitoring.

Compliance with the National Environmental Policy Act

Several commenters stated that the proposed NWPs require an Environmental Impact Statement (EIS). Two commenters objected to the Corps statement in the July 21, 1999, **Federal Register** notice that the NWP program does not require an EIS because the NWPs can only authorize activities with minimal individual and cumulative adverse effects on the aquatic environment.

We maintain our position that the NWPs do not require an EIS, but we are in the process of preparing a Programmatic Environmental Impact Statement (PEIS) for the NWP program.

A number of commenters indicated that the Corps needs to reevaluate the Finding of No Significant Impact (FONSI) issued on June 23, 1998, since the draft NWPs are substantially different from the NWPs proposed in the July 1, 1998, **Federal Register** notice. These commenters said that the three proposed new general conditions warrant reevaluation of the FONSI.

We do not agree that the FONSI issued on June 23, 1998, requires revision. The FONSI issued on June 23, 1998, was a general statement of findings for the NWP program. That FONSI did not address a specific set of NWPs. The three proposed new general conditions are intended to provide additional protection to the aquatic environment and their implementation would not substantially change the scope of the FONSI issued on June 23, 1998, or its findings.

Two commenters said that the Corps should release or issue the Environmental Assessments (EAs) for the new and modified NWPs before those permits are issued so that the public can comment on those EAs. These commenters stated that the EAs should also include regional analyses in addition to the national analyses. One of these commenters indicated that the EAs should contain analyses of potential impacts on recreation, wildlife habitat, endangered species, cultural resources, land use, and habitat degradation, as well as address cumulative impacts that occur when an NWP is used with other NWPs. Another commenter requested that the EAs assess the expansion of geographic scope of the new NWPs, the amount of cumulative and individual impacts that may be authorized by these NWPs, the types of waters that may be adversely affected by the new and modified NWPs, and the functions of those waters. Other commenters objected to the preliminary EAs, stating that those EAs did not include an ecological rationale for the proposed acreage limits.

We do not agree that it was necessary to issue new preliminary EAs for the draft NWPs proposed in the July 21, 1999, **Federal Register** notice. We received few comments in response to the preliminary EAs that were issued with the July 1, 1998, **Federal Register**

notice. Those individuals that commented on the preliminary EAs requested that the Corps include an alternatives analysis in each EA. We have included an alternatives analysis in each EA for the new and modified NWPs. The EAs for the new and modified NWPs issued today discuss, in general terms, the acreage limits for these NWPs, the types of waters subject to the new and modified NWPs, and the functions of those waters. The EAs also include projected impacts to waters of the United States that will occur through the use of these NWPs. Since aquatic resource functions and values vary considerably across the country, we cannot include detailed ecological analyses to support the acreage limits for these NWPs. However, division engineers will be issuing supplemental EAs that will address issues at the district level.

The final EAs for the new and modified NWPs have been substantially modified from the preliminary EAs issued in conjunction with the July 1, 1998, **Federal Register** notice. The final EAs contain general discussions of potential individual and cumulative impacts to the 20 public interest review factors at 33 CFR 320.4 and the factors in Subparts C through F of the Section 404(b)(1) guidelines (40 CFR Part 230).

In response to the July 21, 1999, **Federal Register** notice, some commenters addressed the Programmatic Environmental Impact Statement (PEIS) of the NWP program that the Corps is preparing. One commenter supported the PEIS, but asserted that an EIS is required. Another commenter stated that the PEIS is unwarranted and unnecessary. Many commenters said that the Corps cannot finalize the NWPs before the PEIS is completed.

These issues concerning the PEIS were addressed in the July 21, 1999, **Federal Register** notice (see 64 FR 39265) and we have not changed our position.

Compliance with the Endangered Species Act

Two commenters stated that the proposed NWPs require Endangered Species Act (ESA) Section 7 consultation. Three commenters asserted that the proposed new and modified NWPs do not comply with ESA. One of these commenters said that the Corps does not adequately address the direct, secondary, and cumulative impacts on endangered and threatened species that will result from activities authorized by the NWPs. This commenter also stated that the Corps cannot rely on prospective permittees to conduct adequate investigations to determine whether endangered or threatened species or designated critical habitat occur on the project site. Three commenters indicated that compliance with ESA cannot be ensured for activities that do not require notification to the district engineer.

We have requested programmatic ESA consultation for the NWP program. We contend that the new and modified NWPs, through the requirements of General Condition 11, comply with ESA. We use the ESA interagency consultation regulations at 50 CFR Part 402 when determining compliance with ESA. Scope of analysis issues for ESA will be resolved through consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS). General Condition 11 requires non-Federal permittees to notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project. The permittee shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

Three commenters asserted that the Corps cannot issue the new and modified NWPs prior to completing programmatic ESA consultation. One commenter stated that programmatic ESA consultation does not obviate the need for regional and site-specific consultation. One commenter said that since Standard Local Operating Procedures for Endangered Species (SLOPES) have not yet been completed, the Corps cannot rely on SLOPES to ensure compliance with ESA. One commenter suggested that SLOPES should be developed for all issued NWPs.

We can issue the NWPs prior to the completion of the NWP programmatic ESA consultation, because issuance of the NWPs has not foreclosed opportunities to address endangered species and the NWPs already contain safeguards to ensure compliance with ESA. The programmatic consultation will provide additional assurance that the existing NWPs, as well as the new and modified NWPs issued today, have a formal process to develop any necessary additional procedures at the district level. The programmatic consultation will provide further assurance that the NWP program does not jeopardize the existence of any Federally-listed threatened or endangered species, or destroy or adversely modify the critical habitat of such species. Both the programmatic ESA consultation and the PEIS will address potential cumulative effects on endangered and threatened species and their designated critical habitat regarding the NWP program. We maintain that the SLOPES help ensure compliance with the ESA at the district level. Districts can meet with local offices of the FWS and NMFS at any time to modify or improve their SLOPES. Districts will enter case-specific consultation in any case where the district determines the proposed project may affect a threatened or endangered species.

In addition to NWP General Condition 11, division and district engineers have imposed and can impose additional regional conditions on the NWPs and case-specific special conditions to address endangered or threatened species or their critical habitat. For example, Corps regional conditions can prohibit the use of NWPs in designated critical habitat for endangered or threatened species or require notification for activities in areas known to be inhabited by threatened or endangered species. Some Corps districts have conducted programmatic consultation for specific geographic areas. Also, Corps districts have and will conduct case-specific Section 7 consultation for endangered species. These efforts usually consider the NWP program in that particular area. In summary, General Condition 11, Corps regional conditions, case-specific special conditions, and SLOPES will ensure that the NWP program complies with ESA.

Stream Impacts

Many commenters objected to the proposed NWPs, stating that thousands of feet of stream bed could be channelized or filled under these NWPs. These commenters said that linear foot limits for stream bed impacts should be imposed on the NWPs instead of acreage limits. A large number of commenters recommended adding a 250 linear foot limit for stream bed impacts to the new and modified NWPs. Other commenters suggested linear stream bed impact limits of 200, 100, and 50 linear feet. A few commenters said that the NWPs should not authorize any stream impacts. Another commenter requested clarification regarding the PCN thresholds for linear feet of stream bed impacts, asking if the flooded area is included with the filled area.

After consideration of these comments, we have decided to impose on NWPs 39, 40, 42, and 43, a 300 linear foot limit for filling or excavation activities in stream beds. This 300 linear foot limit applies only to stream beds that normally have flowing water.

Division engineers can regionally condition the NWPs to lower the 300 linear foot limit for stream bed impacts, impose linear foot limits for stream bed impacts on other NWPs, or establish lower PCN thresholds for filling or excavating stream beds.

Several commenters stated that all Corps districts must use the same method to determine where the average annual flow of a stream is 1 cfs. One of these commenters recommended using drainage area as a substitute. Another commenter suggested that the guidance in the preamble to the final rule for the NWP regulations (33 CFR part 330) published in the November 22, 1991, **Federal Register** (56 FR 59112) should be used to establish where the 1 cfs point of a stream is located. That guidance described how to determine the geographic location of the limit of headwaters for perennial, intermittent, and ephemeral streams.

District engineers will utilize the best methods available to identify where the average annual flow of a stream is 1 cfs. Although the guidance published in the November 22, 1991, **Federal Register** was intended to assist district engineers and the regulated public in identifying the geographic location of headwaters (i.e., where the average annual flow is less than 5 cfs), this guidance can also be used to locate the 1 cfs point on a stream. District engineers can utilize the median flow, rather than the average flow, to establish where the 1 cfs point on a stream is located. This approach recognizes that streams with highly irregular flows, such as those occurring in the western portion of the United States, could be dry at the 1 cfs point for most of the year and still average, on an annual basis, a flow of 1 cfs because of high volume, flash flood type flows which greatly distort the average. Furthermore, we recognize that using the median flow for an entire year in streams that have no stream flow for over half the year but with flows greater than 1 cfs for several months would also distort the average. It should also be noted that precision is not required in establishing the 1 cfs point. The definition allows the district engineer to use approximate means to compute it. The drainage area that will contribute an average annual flow of 1 cfs can be estimated by approximating the proportion of average annual precipitation that is expected to find its way into the stream. Knowing the amount of area that will produce this flow in a particular region, the 1 cfs point can be approximated from drainage area maps. For example, in most areas of the eastern United States (i.e., east of the Mississippi River), one square mile of drainage area produces 1 cfs of stream flow annually.

Applicable Waters for the New and Modified Nationwide Permits

A number of commenters objected to the increased scope of waters in which the proposed NWPs published in the July 21, 1999, **Federal Register** could be used. One commenter stated that the NWPs should be used only in headwaters and isolated waters. Two commenters supported the use of the new and modified NWPs in non-tidal waters. Three commenters objected to prohibiting the use of the new and modified NWPs in tidal waters and non-tidal wetlands adjacent to tidal waters. One commenter stated that the Corps has not provided justification for excluding the new and modified NWPs from non-tidal wetlands that are adjacent to tidal waters and recommended that the Corps utilize the term ''contiguous'' instead of ''adjacent.''

We contend that limiting the new NWPs to non-tidal waters, except for non-tidal wetlands adjacent to tidal waters, provides adequate protection of the aquatic environment and helps ensure that these NWPs authorize only activities with minimal adverse effects. Regional conditioning of the new and modified NWPs by division engineers will provide additional protection by restricting or prohibiting the use of the new and modified NWPs in high value waters. General Condition 25 will also protect high value waters. General Condition 26 does not allow permanent, above-grade fills in the 100-year floodplain downstream of the headwaters.

We do not agree that the new and modified NWPs should be used in tidal waters or non-tidal wetlands adjacent to tidal waters. We have identified tidal waters as high value waters on a national basis. Non-tidal wetlands adjacent to tidal waters contribute to the ecological integrity of tidal waters and should not be subject to the new and modified NWPs. District engineers can develop regional general permits for discharges into non-tidal waters adjacent to tidal waters, if such regional general permits are needed for activities that result in minimal adverse effects on the aquatic environment, individually or cumulatively.

One commenter requested that the Corps define the term ''adjacent'' for the purposes of the new and modified NWPs. One commenter stated that the definition of the term ''adjacent'' at 33 CFR 328.3(c) is confusing for use in the NWP program and that the Corps needs to provide a definition that is easily understandable by the regulated public. This commenter also said that the NWPs should be limited to only those non-tidal wetlands that are both adjacent to and inundated by spring tides; wetlands landward of the mean high tide line would be considered as non-tidal wetlands adjacent to tidal waters and wetlands landward of the spring high tide line would not be considered adjacent to tidal waters. Two commenters asked the Corps to provide a clear explanation of the upstream limit of non-tidal wetlands adjacent to tidal waters and whether non-tidal wetlands miles upstream of tidal waters would be considered adjacent to those tidal waters.

For the new and modified NWPs, the definition of the term ''adjacent'' at 33 CFR 328.3(c) will be used. Since aquatic systems vary considerably across the country, we cannot establish more specific criteria at a national level to further define adjacency. District engineers will make appropriate determinations of adjacency, based on regional hydrologic conditions.

Wetlands located between mean high water and the spring high tide line are tidal wetlands because they are inundated by tidal waters (see 33 CFR 328.4(b)(1)). Non-tidal wetlands that are bordering, contiguous, or neighboring to tidal waters are considered adjacent to those tidal waters. The upstream limit of non-tidal wetlands adjacent to tidal waters is determined by the degree of influence of the tidal waterbody on non-tidal wetlands. Those non-tidal wetlands that exert direct hydrologic influence on tidal waters are considered adjacent to those tidal waters. For the purposes of the NWPs, non-tidal streams located upstream of the head of tide are not considered adjacent to tidal waters, although those streams eventually flow into tidal waters and are part of the surface tributary system. Wetlands adjacent to non-tidal streams are within the scope of waters for the new and modified NWPs.

One commenter stated that the new and modified NWPs should not authorize discharges into prairie potholes, playa lakes, or vernal pools. Another commenter said that the NWPs should not be used in rare and irreplaceable wetlands.

We do not agree that the new and modified NWPs should be subject to a national prohibition against discharges of dredged or fill material into prairie potholes, playa lakes, or vernal pools. Rare and irreplaceable wetlands have not been formally defined. General Condition 25 restricts activities in designated critical resource waters. Further, division engineers can

regionally condition these NWPs to restrict or prohibit discharges into high value waters. For those activities that require notification, district engineers can exercise discretionary authority if the proposed work will result in more than minimal adverse effects on the aquatic environment.

Mitigation

A large number of commenters specifically addressed the compensatory mitigation requirements of the proposed new and modified NWPs. One commenter said that the goal of compensatory mitigation is not clearly defined in the proposed NWPs. Several commenters requested that the Corps clarify when compensatory mitigation is required for activities authorized by NWP. These commenters said that there are some inconsistencies concerning compensatory mitigation requirements in the July 21, 1999, **Federal Register** notice. Two of these commenters referred to Corps statements in the July 21, 1999, **Federal Register** notice that: (1) Compensatory mitigation will normally be required for activities that require notification and, (2) in some circumstances, compensatory mitigation may be unnecessary because the adverse effects on the aquatic environment are minimal without mitigation.

For the NWP program, including the new and modified NWPs, the purpose of compensatory mitigation is to ensure that the authorized work results in minimal adverse effects on the aquatic environment. For those activities that require notification to the district engineer, compensatory mitigation may be necessary to ensure that the authorized work results in minimal adverse effects on the aquatic environment. District engineers will determine, on a case-by-case basis, when compensatory mitigation is not practicable. Our use of the word ''normally'' when referring to compensatory mitigation for NWP activities allows district engineers flexibility in determining when compensatory mitigation will be required and lets the regulated public know that compensatory mitigation is likely to be required for impacts that exceed PCN thresholds, except under circumstances where the adverse effects are minimal without compensatory mitigation. Activities that do not require notification are presumed to result in minimal adverse effects and do not require compensatory mitigation to ensure minimal adverse effects. Division engineers can regionally condition an NWP to lower the notification threshold to allow district engineers to determine, on case-by-case basis, if compensatory mitigation is necessary to ensure that the authorized work results in minimal adverse effects on the aquatic environment.

Many commenters opposed the use of compensatory mitigation to ensure that activities authorized by NWPs result in minimal adverse effects on the aquatic environment. Several commenters supported the use of compensatory mitigation to ensure that authorized activities result in minimal adverse effects. One of these commenters said that compensatory mitigation should not be required simply to meet a ''no net loss'' of wetland acreage goal. One commenter indicated that compensatory mitigation should not be required for activities authorized by NWP because NWPs can only authorize activities with minimal adverse effects.

Compensatory mitigation is often necessary to offset losses of waters of the United States and ensure that the authorized activity results in minimal adverse effects on the aquatic environment. The NWP regulations at 33 CFR 330.1(e)(3) allow permittees to provide compensatory mitigation to reduce the adverse effects of the proposed work to the minimal level. In the July 21, 1999, **Federal Register** notice, we stated that for the purposes of the NWP program, compensatory mitigation is required to ensure that the authorized activities result in minimal adverse effects on the aquatic environment, individually or cumulatively, not to achieve ''no net loss'' of wetland acreage. NWP compensatory mitigation requirements are not driven by the ''no net loss'' goal, but will help support that goal. A district engineer can determine, for an activity that requires notification, that compensatory mitigation is not practicable.

Two commenters said that compensatory mitigation should be required only for impacts to waters of the United States. Another commenter stated that the Corps is proposing to require mitigation for activities not subject to its regulatory authority, such as flooding, excavation, and drainage activities. One commenter indicated that the July 21, 1999, **Federal Register** notice requires compensatory mitigation for non-wetland impacts. One commenter remarked that compensatory mitigation for wetland or stream losses should be subject to a public notice process because mitigation is being used to avoid significant impacts.

Compensatory mitigation may be required by district engineers to offset losses of waters of the United States to ensure that the authorized work results in minimal adverse effects on the aquatic environment. Although district engineers may require out-of-kind compensatory mitigation, such as the restoration of upland riparian zones, to compensate for losses of the functions and values of waters of the United States, compensatory mitigation is required only to offset losses of waters of the United States. District engineers can require compensatory mitigation for losses of aquatic resource functions and values caused by flooding, excavation, and drainage caused by activities that are associated with activities that are regulated by the Corps (i.e., discharges of dredged or fill material). However, if the activity does not involve work in navigable waters of the United States or a discharge of dredged or fill material into waters of the United States, compensatory mitigation cannot be required because no Corps permit is necessary to conduct the activity. We do not agree that a public notice process is required for compensatory mitigation projects.

Several commenters stated that the mitigation requirements discussed in the July 21, 1999, **Federal Register** notice do not adequately protect wetlands. Numerous commenters said that the NWPs should be conditioned to require a full alternatives analysis. Many commenters requested that the Corps condition all NWPs to require project proponents to avoid impacts to the maximum extent practicable and implement compensatory mitigation that fully replaces all losses of wetland acreage and functions. One commenter objected to including minimization as a form of mitigation. Two commenters asserted that the NWPs should be subject to the mitigation requirements of the 1990 mitigation Memorandum of Agreement (MOA), including sequencing requirements.

The mitigation requirements of the new and modified NWPs adequately protect wetlands. General Condition 19 requires permittees to avoid and minimize discharges into waters of the United States on-site to the maximum extent practicable. General Condition 19 also states that district engineers can require compensatory mitigation to ensure that the authorized work results in minimal adverse effects on the aquatic environment. The use of minimization as mitigation is well established in Federal regulations (see the Council on Environmental Quality's regulations at 40 CFR 1508.20). The avoidance provisions of the 1990 mitigation MOA apply only to standard individual permits, not activities authorized by NWPs.

One commenter stated that some of the new NWPs (e.g., NWPs 39 and 43)

require compensatory mitigation without requiring submission of a notification to the district engineer. This commenter said that compensatory mitigation should not be required unless the district engineer reviews the PCN and determines that compensatory mitigation is necessary to offset authorized losses of waters of the United States. One commenter objected to requiring compensatory mitigation for activities that require notification, but another commenter supported this requirement. Two commenters objected to allowing district engineers to make the final determination whether compensatory mitigation is required.

Compensatory mitigation is not required for NWP activities that do not require notification to the district engineer. Division engineers can regionally condition NWPs to lower PCN thresholds or require notification for all activities, if such PCN thresholds are necessary to allow district engineers to require compensatory mitigation to ensure that adverse effects to the aquatic environment are minimal. We believe that it is appropriate for district engineers to make the final decisions whether compensatory mitigation is necessary to ensure that activities authorized by NWPs result in minimal adverse effects.

A large number of commenters recommended that the Corps require acre-for-acre wetland restoration as compensatory mitigation for all activities resulting in the loss of greater than ¼ acre of wetlands. Other commenters suggested ½, ⅓, and 1 acre thresholds for requiring compensatory mitigation. Many commenters said that a minimum 1:1 mitigation ratio should be required for all losses of waters of the United States authorized by NWPs. Other commenters recommended higher mitigation ratios. One commenter said that the Corps should provide compensatory mitigation guidelines that addresses site selection and design, options for compensatory mitigation, and a description of success criteria and monitoring requirements.

While final specific compensatory mitigation requirements, such as replacement ratios, are determined by district engineers on a case-by-case basis, we agree that there should be a minimum requirement of an acre-for-acre (1:1) wetland replacement as compensatory mitigation for all activities requiring notification. The Corps can require compensatory mitigation in excess of a 1:1 ratio of impact acreage to compensatory mitigation acreage to adequately replace aquatic resource functions and values that are lost as a result of activities authorized by NWPs. The Corps can also accept out-of-kind compensatory mitigation, if it is best for the aquatic environment. Existing policy and guidance for compensatory mitigation provides a preference for on-site and in-kind replacement of the functions and values of the impacted aquatic resource. If on-site compensatory mitigation is not practicable, off-site compensatory mitigation should be undertaken in the same geographic area if practicable, (*i.e.,* in close proximity and, to the extent possible, the same watershed) or environmentally preferable. The Corps can also accept out-of-kind compensatory mitigation, if it is best for the aquatic environment.

Many commenters stated that the Corps should require in-kind, on-site replacement of wetlands. Several commenters supported the utilization of off-site, out-of-kind compensatory mitigation for losses of waters of the United States authorized by NWPs. These commenters also supported the Corps position that the appropriate compensatory mitigation required for activities authorized by NWPs should be based on what is best for the aquatic environment. One commenter remarked that the selected mitigation method should best replace site-specific functions and values of the impacted aquatic habitat. One commenter supported the use of out-of-kind compensatory mitigation, such as the establishment and maintenance of vegetated buffers next to streams, and stream restoration, and the preservation of wetland/upland complexes.

When reviewing compensatory mitigation proposals, district engineers will consider what is best for the aquatic environment, including requirements for vegetated buffers next to perennial and intermittent streams and other open waters. Wetland restoration, enhancement, creation, and, only in exceptional circumstances, preservation are not the only methods of providing compensatory mitigation for activities authorized by NWPs. Stream restoration and enhancement, including the restoration or preservation of riparian zones, can also provide compensatory mitigation for losses resulting from activities authorized by NWPs. The establishment and maintenance of vegetated buffers next to streams and other open waters as compensatory mitigation for losses of waters of the United States authorized by NWPs are discussed in the next section of this notice.

Many commenters opposed the Corps preference for the use of mitigation banks and in lieu fee programs to provide compensatory mitigation for losses of waters of the United States authorized by NWPs. A number of other commenters supported the Corps preference for consolidated compensatory mitigation methods. One commenter indicated that the preference for consolidated compensatory mitigation methods should not be limited to mitigation banks. One commenter expressed some support for using mitigation banks and other consolidated mitigation methods as alternatives for on-site compensatory mitigation because of the uncertainty for success in some individual compensatory mitigation projects. This commenter also recommended developing guidance for in lieu fee programs and other consolidated mitigation methods before allowing widespread use of these methods. Another commenter recommended that the text of the NWPs and the preamble to the notice announcing the issuance of the NWPs refer to the Federal guidance for compensatory mitigation, especially for the use of mitigation banks and in lieu fee programs. Two commenters indicated that in lieu fee programs should not be considered as compensatory mitigation until guidance has been developed for these programs. One commenter objected to the use of in lieu fee programs to provide compensatory mitigation because the commenter asserts that these programs are not subject to agency and public review and do not ensure compliance with the goal of no net loss.

Consolidated compensatory mitigation methods, including mitigation banks, are often an efficient means of compensating for losses of waters of the United States, particularly for multiple small activities. We recognize that consolidated compensatory mitigation methods are often more practicable and successful because of the planning and implementation efforts typically expended on these activities by their proponents. Individual efforts to create, restore, or enhance wetlands to replace small wetland losses may be unsuccessful because of poor planning and/or construction. Furthermore, consolidated mitigation efforts are often better monitored and maintained and often result in the establishment of larger contiguous wetland areas that benefit the overall local aquatic environment and many of the species that utilize larger aquatic habitats.

One commenter stated that where mitigation banks and in lieu fee programs are in the same watershed, preference should be given to using the mitigation bank since mitigation banks subject to more stringent requirements

and more likely to be successful. Two commenters said that mitigation banks should be located in the same watershed as the site of the NWP activity. One commenter said that in lieu fee programs should not be used as compensatory mitigation for activities that result in the loss of greater than 1/10 acre of waters of the United States.

Where practicable, mitigation banks and other consolidated mitigation methods should be located in the same watershed as the site of the activity authorized by NWP. District engineers have the authority to approve or disapprove the use of specific mitigation approaches as compensatory mitigation for losses of waters of the United States authorized by NWPs. Permittees should have the flexibility to utilize compensatory mitigation methods that are within their means to accomplish and meet the requirements to offset unavoidable losses of waters of the United States. To the extent practicable, permittees should consider use of approved mitigation banks and other forms of consolidated compensatory mitigation. We do not agree that there should be an acreage limit that would preclude the use of any particular type of mitigation to provide compensatory mitigation for losses of waters of the United States authorized by NWPs.

Several commenters stated that the preservation of high value wetlands should be encouraged as a form of compensatory mitigation. A number of commenters objected to the use of preservation as compensatory mitigation, unless one-to-one replacement of aquatic habitats has been achieved. One commenter objected to the use of enhancement unless one-to-one replacement of wetlands has been accomplished.

We concur that the preservation of high value wetlands is one appropriate method of compensatory mitigation for losses of waters of the United States, but only in exceptional circumstances. Preservation of aquatic habitats should be done in conjunction with aquatic habitat restoration, creation, or enhancement to offset losses of waters of the United States. The amount of preservation or enhancement that will be accepted as compensatory mitigation for impacts authorized by NWPs will be determined by district engineers on a case-by-case basis.

To further clarify the issue of mitigation, we have removed some of the mitigation information from General Condition 13 and consolidated the mitigation requirements for the NWPs in General Condition 19.

Vegetated Buffers

In the July 21, 1999, **Federal Register** notice, we proposed to require the establishment and maintenance of vegetated buffers adjacent to waters of the United States as an alternative form of compensatory mitigation to ensure that activities authorized by NWPs result in minimal adverse effects on the aquatic environment. The vegetated buffer requirement was in the draft NWP 39 and the proposed modifications to General Conditions 13 and 19.

As a result of our review of the comments received in response to the July 21, 1999, **Federal Register** notice, we have made several changes to the vegetated buffer requirements for the NWPs. For example, vegetated buffers are required only if there are perennial or intermittent streams or other open waters on the project site. Vegetated buffers will be established and maintained on the uplands or wetlands next to the open waters. For the purposes of the NWPs, vegetated buffers are not required next to ephemeral streams or wetlands. The use of vegetated buffers as mitigation for NWP activities is discussed in General Condition 19. The changes to the vegetated buffer requirements are discussed in more detail below.

Many commenters supported the vegetated buffer requirements for the new and modified NWPs. A number of commenters stated that vegetated buffers should not be a condition of an NWP authorization. These commenters said that vegetated buffers should be considered only when a landowner voluntarily agrees to establish and maintain vegetated buffers adjacent to waters of the United States as an alternative form of compensatory mitigation. Several commenters contend that compensatory mitigation sites should be protected by vegetated buffers. Another commenter stated that the use of upland buffers should be consistent with current Federal guidance, particularly the ''Federal Guidance for the Establishment, Use and Operation of Mitigation Banks'' (60 FR 58605). A commenter stated that the vegetated buffer requirement should not apply to all activities that require a Corps permit, such as piers.

Vegetated buffers will be required only when there are open waters, such as perennial or intermittent streams, on the project site, and the NWP activity involves discharges of dredged or fill material into waters of the United States. However, a required vegetated buffer could be established off-site for impacts on the project site. Project proponents will not be required to establish and maintain vegetated buffers next to ephemeral streams. Vegetated buffers are not normally required for activities that require only Section 10 permits, but district engineers can require vegetated buffers as compensatory mitigation for activities authorized by Section 10 permits, if such compensatory mitigation is appropriate. District engineers will determine, on a case-by-case basis, whether or not vegetated buffers are required. Vegetated buffers are required only when it is practicable for the permittee to establish these areas and the vegetated buffer will be self-maintaining, other than restrictions on cutting or removal of the buffer. If the permittee does not own the land next to the open waters, then vegetated buffers are not required unless the permittee can reasonably obtain the appropriate conservation easements for those buffers.

Compensatory mitigation sites can be protected by vegetated buffers, but we do not agree that this should be a requirement of the NWP program. However, providing a buffer to the restored waters of the United States in a mitigation bank is precisely why a good mitigation bank will have a matrix of waters and uplands for maximum ecological functions and values. The ''Federal Guidance for the Establishment, Use and Operation of Mitigation Banks'' does not contain any useful guidance concerning the establishment and maintenance of vegetated buffers next to open waters. During the revision of the vegetated buffer requirements for the NWPs, we considered the riparian forest buffer Conservation Practice Standard (Code 391A) issued by NRCS in July 1997. We also considered the information in the document entitled ''Riparian Forest Buffers: Function and Design for Protection and Enhancement of Water Resources'' published by the Forest Service.

A large number of commenters opposed the vegetated buffer requirement. Those in opposition to this requirement were divided into two groups. One group objected to vegetated buffers as compensatory mitigation for discharges of dredged or fill material into wetlands because they believe that wetland losses should be compensated only through wetland restoration, creation, or enhancement. The other group of commenters stated that the Corps does not have the regulatory or statutory authority to require vegetated buffers adjacent to waters of the United States.

Those commenters that oppose the use of vegetated buffers as

compensatory mitigation for losses of wetlands indicated that vegetated buffers adjacent to waters of the United States do not replace the lost functions that would be provided by wetland restoration or creation. Many of these commenters said that vegetated buffers next to open waters and streams do not provide flood storage capacity, wildlife habitat, water quality, or groundwater recharge functions. Numerous commenters stated that using vegetated buffers as compensatory mitigation will not help the Administration achieve its goal of a net gain of 100,000 acres of wetlands per year. Other commenters indicated that vegetated buffers as compensatory mitigation is contrary to the ''no net loss'' goal. One commenter said that the use of vegetated buffers is contrary to the 1990 mitigation MOA.

Vegetated buffers next to streams and other open waters on the project site are an important type of compensatory mitigation that provides substantial aquatic habitat, water quality, and flood storage benefits. The establishment and maintenance of vegetated buffers may be a preferable form of compensatory mitigation because it may be infeasible to create or restore wetlands on the project site after the activity is built. Vegetated buffers, even if they are established on uplands next to streams and other open waters, would provide on-site aquatic habitat, water quality, and flood storage functions.

Vegetated buffers next to streams and other open waters provide many of the same functions that wetlands provide. In fact, many vegetated buffers will be wetlands. Due to their proximity to open waters, vegetated buffers are more effective at protecting open waters than wetlands distant from those open waters. We have refined the following list of the functions of vegetated buffers from the list of functions published in the July 21, 1999, **Federal Register** notice. In general, vegetated buffers next to streams and open waters provide the following functions: (1) Reduce adverse effects to water quality by removing nutrients and pollutants from surface runoff; (2) reduce concentrations of nutrients and pollutants in subsurface water that flows into streams and other open waters; (3) moderate storm flows to streams, which reduces downstream flooding and degradation of aquatic habitat; (4) stabilize soil (through plant roots), which reduces erosion in the vicinity of the open waterbody; (5) provide shade to the waterbody, which moderates water temperature changes and provides a more stable aquatic habitat for fish and other aquatic organisms; (6) provide detritus, which is a food source for many aquatic organisms; (7) provide large woody debris from riparian zones, which furnishes cover and habitat for aquatic organisms and may cause the formation of pools in the stream channel; (8) provide habitat to a wide variety of aquatic and terrestrial species; (9) trap sediments, thereby reducing degradation of the substrate that provides habitat for fish and other aquatic organisms (*e.g.,* some fish species depend upon gravel stream beds for spawning habitats); and (10) provide corridors for movement and dispersal of many species of wildlife. In addition, vegetated buffers next to streams provide flood storage capacity and groundwater recharge functions.

Although we are requiring the establishment and maintenance of vegetated buffers in uplands next to open waters as compensatory mitigation for certain activities, we expect to continue our documented programmatic no net loss of wetlands approach to the regulatory program. For most activities authorized by NWPs, vegetated buffers will only be a portion of the required compensatory mitigation. Moreover, where the project involves filling wetlands, vegetated buffers will only be required after a 1:1 ratio based on acreage of wetland mitigation has been required. Only ⅓ of the additional mitigation required for the project may be non-wetland vegetated buffers. The vegetated buffer requirement for the NWPs is not contrary to the 1990 mitigation MOA, because vegetated buffers next to open waters help achieve the goals of the Clean Water Act. It is also important to note that the 1990 mitigation MOA applies only to activities subject to the standard permit process.

One commenter requested clarification as to where vegetated buffers must be located. A few commenters disagree with the Corps position that vegetated buffers adjacent to waters of the United States provide benefits for the aquatic environment. One commenter requested that the Corps explain why vegetated buffers are necessary and specify the goals that will be accomplished by vegetated buffers. This commenter said that the goals of vegetated buffers will affect width requirements. This commenter also believes that not all areas adjacent to open waters provide significant benefits to water quality and that all vegetated buffers do not perform all 10 functions listed on page 39274 of the July 21, 1999, **Federal Register** notice, because the functions of vegetation buffers are dependent on the vegetation present and site and soil characteristics.

For the purposes of the NWPs, vegetated buffers are to be established and maintained on uplands or wetlands next to perennial and intermittent streams and other open waters. The functions and values of vegetated buffers next to open waters, especially forested riparian zones next to streams, are well documented in the scientific literature. The main goal of the vegetated buffer requirement is to restore, enhance, and protect open waters. In general, properly designed and implemented vegetated buffers, especially those inhabited by trees, will perform the functions listed above. Since we are not requiring vegetated buffers next to ephemeral streams, most vegetated buffers should have adequate amounts of water to naturally establish and support trees in the riparian zone. Vegetated buffers will normally be 25 to 50 feet wide on both sides of streams, but the district engineer can require wider vegetated buffers to address documented water quality concerns. A 25 to 50 foot wide vegetated buffer next to a stream provides important aquatic habitat functions and values, as well as substantial water quality benefits.

Many commenters believe that the vegetated buffer requirements for the new and modified NWPs exceed the Corps regulatory authority. Several commenters consider the vegetated buffer requirement as an attempt to expand the scope of the Corps jurisdiction to uplands. Numerous commenters indicated that the Corps is requiring vegetated buffers even if the work does not involve discharges of dredged or fill material into waters of the United States. Many commenters said that any vegetated buffer requirements should be imposed by the states, who have authority under Section 401 of the Clean Water Act to address water quality issues. Several commenters said that vegetated buffers could also be imposed by states through the requirements of the National Pollutant Discharge Elimination System program.

The Corps has the statutory authority to require vegetated buffers next to streams and other open waters because the goal of the Clean Water Act is to restore and maintain the chemical, physical and biological integrity of Nation's waters. This goal is stated in Section 101 of the Clean Water Act and is applicable to all sections of the Clean Water Act, including section 404. Vegetated buffers next to streams and other open waters help maintain the chemical, physical, and biological integrity of these waters. The establishment and maintenance of vegetated buffers next to streams is the

restoration of riparian zones. Discharges of dredged or fill material into waters of the United States, which the Corps regulates under section 404 of the Clean Water Act, result in the loss of aquatic resource functions and values. The establishment and maintenance of vegetated buffers next to streams and other open waters offsets losses of aquatic resource functions and values and reduces degradation of these aquatic resources.

The vegetated buffer requirement is not an attempt to expand the Corps regulatory jurisdiction. We are not asserting jurisdiction over uplands next to streams and other open waters. We cannot require compensatory mitigation for upland impacts, but we can require, as compensatory mitigation, upland vegetated buffers that restore or protect aquatic habitat and water quality. The establishment or maintenance of a vegetated buffer next to waters of the United States can be an important part of the compensatory mitigation required for a Corps permit. The establishment and maintenance of vegetated buffers next to open waters can be considered as compensatory mitigation that offsets losses of waters of the United States and ensures that the adverse effects of the authorized work on the aquatic environment are minimal. Vegetated buffers are not normally required for activities that do not involve discharges of dredged or fill material into waters of the United States. For example, vegetated buffers are not required for structures in navigable waters of the United States, unless the district engineer determines that such compensatory mitigation is necessary to offset impacts to those waters.

Vegetated buffers next to streams and other open waters do more than protect water quality. Eight of the 10 functions listed in the July 21, 1999, **Federal Register** notice relate to aquatic habitat. Only two functions listed in that notice exclusively addressed water quality functions. Likewise, most of the functions of vegetated buffers listed in this **Federal Register** notice are aquatic habitat functions. Commenters objecting to the vegetated buffer requirement focused only on the water quality functions of vegetated buffers, and ignored the aquatic habitat functions.

A number of commenters stated that the vegetated buffer requirement duplicates, and may conflict with, local land use planning. Two commenters said that the vegetated buffer requirement is contrary to 33 CFR 320.4(j)(2), which states that the primary responsibility for zoning lies with state, local and Tribal governments. Many commenters believe that the vegetated buffer requirement constitutes a taking of private property. Two commenters said that the vegetated buffer requirement has the potential to result in a taking of private property because the Corps has failed to demonstrate the causal link between the vegetated buffer requirement and specific water quality concerns caused by discharges of dredged or fill material into waters of the United States authorized by the NWPs. These commenters assert that the Corps must allow alternative methods to address water quality concerns.

The vegetated buffer requirement does not duplicate or conflict with local land use planning. Although some state and local governments have vegetated buffer requirements, there are many regions that do not have such requirements. The district engineer will consider state and local vegetated buffer requirements when determining the vegetated buffer requirements for NWP activities. If the state or local vegetated buffer requirements are adequate, then the district engineer can defer to those requirements. The vegetated buffer requirement is not contrary to 33 CFR 320.4(j)(2) because it does not override state or local zoning decisions. If it is impractical for the permittee to establish and maintain vegetated buffers next to open waters on the project site, then vegetated buffers are not required. If the project proponent does not want to establish and maintain vegetated buffers and the district engineer determines that such buffers are necessary to ensure the proposed work results in minimal adverse effects on the aquatic environment, then the project proponent can request an individual permit or other form of DA permit.

The vegetated buffer requirement does not constitute a taking of private property because it is compensatory mitigation to offset losses of aquatic resource functions and values. If the project proponent does not want to establish and maintain vegetated buffers next to open waters on the project site, then he or she can request another form of DA permit to authorize the activity. The removal of nutrients, sediments, and pollutants from surface and shallow subsurface waters by vegetated buffers next to open waters is well documented in the scientific literature. The establishment and maintenance of vegetated buffers is a type of out-of-kind compensatory mitigation to offset authorized losses of wetlands and other waters of the United States, which also remove these chemical compounds from waters. The vegetated buffer requirement is no different than requiring the alteration of uplands to create wetlands as compensatory mitigation for losses of wetlands. In fact, the establishment and maintenance of vegetated buffers next to streams and other open waters is likely to be more successful and less costly than attempting to create wetlands by grading and altering uplands. When reviewing compensatory mitigation proposals, district engineers can consider alternative forms of compensatory mitigation to address water quality concerns, if vegetated buffers are not practical for the project site.

Several commenters opposed the vegetated buffer requirement, stating that it substantially reduces the amount of developable area on a parcel of land. Two commenters said that the vegetated buffer requirement will be difficult to implement for those projects that have already received subdivision approval. These commenters also assert that this requirement will increase the cost of housing. Several commenters said that the establishment and maintenance of vegetated buffers is practical only in large, open spaces. One commenter stated that the vegetated buffer requirement will increase sprawl development because it requires buildings to be constructed farther apart from each other.

Although the vegetated buffer requirement may reduce the amount of developable land on a particular parcel, we do not agree that such a reduction will be substantial. In most situations, vegetated buffers will be located in 100-year floodplains, in which there are often state or local building restrictions. If it is impractical for the project proponent to establish and maintain vegetated buffers on the property because of prior subdivision approval, then the district engineer can determine that vegetated buffers are not required. We do not agree that the vegetated buffer requirement will increase the cost of housing more than any other type of compensatory mitigation requirement, such as the creation of wetlands. In most circumstances, establishing and maintaining vegetated buffers will be less costly than grading land to create wetlands. The vegetated buffer requirement will not encourage sprawl development.

One commenter believes that the Corps needs to provide a cost-benefit analysis for the vegetated buffer requirement. This commenter also stated that this requirement requires an environmental impact statement because it is a major Federal action.

The vegetated buffer requirement does not need a cost-benefit analysis or an environmental impact statement.

In the July 21, 1999, **Federal Register** notice, we stated that vegetated buffers

will normally be 50 to 125 feet wide, but provided district engineers with the flexibility to impose narrower or wider vegetated buffers. Many commenters stated that the widths of vegetated buffers required for NWP activities should be based on the width necessary to ensure that the adverse effects to the aquatic environment are minimal. These commenters said that permit conditions, including mitigation requirements, must be directly related to impacts of the proposed work and appropriate to scope and degree of those impacts. One of these commenters cited 33 CFR 325.4(a). Another commenter cited 33 CFR 320.4(r) and remarked that the Corps has not demonstrated that vegetated buffers provide compensatory mitigation for identifiable losses of resources. Numerous commenters said that the requirement for 50 to 125 foot wide vegetated buffers would, in some cases, result in compensatory mitigation requirements that would exceed the impacts of the activity. Two commenters disapprove of the vegetated buffer requirement, stating that it is not tailored to the effects of the authorized activity and could result in large vegetated buffers for projects that result in small losses of waters of the United States. Several commenters said that vegetated buffer requirements for particular projects must be in proportion of the impacts of the authorized work.

After considering these comments, we have reduced the recommended width of vegetated buffers to 25 to 50 feet wide on both sides of the stream or 25 to 50 feet from the OHWM or bank of the open waterbody. District engineers can require wider vegetated buffers if there are documented water quality concerns. The width of the vegetated buffer is measured in a direction perpendicular to the OHWM or bank of the open waterbody. The 25 to 50 foot wide vegetated buffer will provide aquatic habitat functions and values, as well as water quality benefits. When determining the appropriate width of vegetated buffers, district engineers will consider the degree of the adverse effects on the aquatic environment caused by the authorized work and require compensatory mitigation to the extent necessary to ensure that the adverse effects are minimal. The required compensatory mitigation, including vegetated buffers, will be in proportion, from an aquatic function and value perspective, to the authorized impacts to waters of the United States. If the authorized work results in minimal adverse effects on the aquatic environment without compensatory mitigation, then vegetated buffers are not required.

Two commenters said that the Corps should not specify a minimum width for vegetated buffers. One of these commenters contends that the benefits of vegetated buffers is likely to be different for dissimilar types of wetlands and waterbodies. One commenter requested clarification concerning the criteria that will be used to determine the width of vegetated buffers for specific project sites and which plant species should be used to establish the vegetated buffer. One commenter asked if a 50 to 125 foot wide vegetated buffer will be required in all cases. Two commenters recommended a minimum vegetated buffer width of 100 feet.

One commenter stated that many factors are cited in the current literature for determining the appropriate width of vegetated buffers. This commenter said that the Corps needs a standard method that district engineers can use to determine appropriate, site-specific vegetated buffer widths. This commenter also indicated that the width of the vegetated buffer should be based on the value of the aquatic resource to be protected and adjacent land uses. In addition, the method should identify situations where vegetated buffers are inappropriate or impractical. Several commenters said that the Corps should use a more flexible approach for vegetated buffer requirements, including the consideration of other methods that provide the same benefits, while utilizing less land. One commenter suggested methods to provide flexibility for vegetated buffer requirements, including buffer averaging to allow certain buffer areas to be narrower as long as the average width meets minimum requirements, conservation easements that can be donated to responsible charitable trusts and owner tax benefits, and density trading which allows developers density credits to offset loss of useable land to buffers.

We believe that recommending a 25 to 50 foot wide vegetated buffer and allowing district engineers the flexibility to determine appropriate vegetated buffer widths on a case-by-case basis is appropriate. A 25 to 50 foot wide vegetated buffer next to open waters will protect or restore aquatic habitat functions and values and provide water quality benefits. District engineers can require wider vegetated buffers if there are documented water quality concerns that can be addressed by a wider vegetated buffer. The district engineer will determine the appropriate width of the vegetated buffer on a case-by-case basis, based on the degree of impacts and the quality of waters. District engineers will also assess, on a case-by-case basis, whether or not vegetated buffers are impractical or inappropriate. District engineers can also consider the use of buffer width averaging. Density trading is more appropriately addressed by local planning and zoning agencies.

One commenter suggested using vegetated buffer width guidelines published by NRCS, which are based on soil type, slope, and topography. Two commenters stated that appropriate vegetated buffer widths should be determined by district engineers after consultation with Federal and state resource agencies. Two commenters requested that the Corps provide guidance for determining the length of the vegetated buffer along the open waterbody (i.e., how far upstream and downstream the vegetated buffer should extend).

We do not agree that it is necessary, for the purposes of the NWPs, to utilize complex vegetated buffer width guidelines based on soil types, slopes, and topography. Vegetated buffers 25 to 50 feet wide provide substantial aquatic habitat functions and water quality benefits. District engineers can require wider vegetated buffers to address documented water quality concerns or narrower vegetated buffers where it is not practicable to require 25 foot wide buffers. District engineers can coordinate with Federal and state resource agencies to determine the appropriate vegetated buffer width for a particular project, but we do not believe that this is necessary in all cases. The length of the vegetated buffer should extend along the open waterbody to the extent the district engineer determines necessary to offset authorized impacts.

Several commenters indicated that the guidance in the July 21, 1999, **Federal Register** notice concerning the width of vegetated buffers contradictory. For instance, General Condition 9 states that vegetated buffers must be established to the maximum extent practicable but there is a statement on page 39339 that says that the vegetated buffer should be as wide as possible. In addition, on page 39274 there is a statement that the width of the vegetated buffer must balance the benefits to environment with the uses of property resulting from authorized work. These commenters believe that the width of the vegetated buffer should be based on the benefits of the buffer and the adverse effects of the regulated activity (i.e., the discharge of dredged or fill material into waters of the United States), not all uses of the project.

We do not agree that the discussion of vegetated buffer requirements in the July 21, 1999, **Federal Register** notice contains contradictions. The appropriate width of a vegetated buffer is dependent on what is practicable for the prospective permittee and the amount of vegetated buffer that is necessary to ensure that the activity results in minimal adverse effects to the aquatic environment.

Several commenters said that vegetated buffers should not be required in all cases, particularly in those situations where the adverse effects on the aquatic environment are minimal. One commenter asked if vegetated buffers are required for activities that do not require notification to the district engineer. Another commenter asked if vegetated buffers are required even if the proposed work does not result in any impacts to streams, open waters, or wetlands on the project site. One commenter stated that vegetated buffers should be required only if there are perennial or intermittent streams on the site. Two commenters asserted that vegetated buffers should not be required next to ephemeral streams. One commenter stated that flexibility for district engineers to determine vegetated buffer widths reduces predictability for the regulated public when planning developments. Two commenters recommended that joint Federal agency guidance be developed for vegetated buffer requirements.

Vegetated buffers are not required if the proposed work results in minimal adverse effects on the aquatic environment without compensatory mitigation. Vegetated buffers are only required where the proposed project requires a Corps permit. The Corps is not establishing any new authority to regulate riparian areas, where no Corps permit is otherwise required. Vegetated buffers are not required for activities that do not require notification, since these activities result in minimal adverse effects on the aquatic environment. Vegetated buffers are required if there are open waters on the project site. We agree that vegetated buffers should not be required next to ephemeral streams. We will consider the development of joint guidance for vegetated buffer requirements.

Two commenters objected to requirements for conservation easements or deed restrictions for vegetated buffers. Another commenter supported the requirement for conservation easements or deed restrictions.

As with other forms of compensatory mitigation, conservation easements or deed restrictions for vegetated buffers are necessary to ensure that the compensatory mitigation site is maintained and protected from future alteration.

Three commenters requested clarification concerning how vegetated buffers are to be maintained and for how long vegetated buffers must be maintained. Two commenters stated that the requirement to maintain vegetated buffers is too burdensome for permittees because it implies that the permittees would have to monitor vegetated buffers and replace any vegetation that dies or is damaged during a flood or other storm event. One commenter indicated that the maintenance of vegetated buffers is problematic in arid regions because water would have to be provided to the plants to ensure their survival, which would be costly and contrary to water conservation policies. Two commenters suggested a limit of one year for the maintenance of vegetated buffers.

Permittees are not required to establish and maintain vegetated buffers that would require active management, such as irrigation. If the vegetated buffer must be planted, it must be self-sustaining, without the need for maintenance. Trees and shrubs damaged by storms and other events do not need to be replaced because the vegetation will grow back at the buffer site.

Two commenters supported the requirement for native species in vegetated buffers. Several commenters objected to requiring native species in vegetated buffers. One commenter said that this requirement is contrary to current best management practices because certain non-invasive, non-native plant species may be preferable in certain circumstances. Two commenters stated that the requirement for native species is unnecessary because there is no connection between water quality and the planting of native species or the removal of noxious weeds. Two commenters indicated that the requirement for native trees and shrubs in vegetated buffers is too strict and permittees should be able to plant native grasses and other herbaceous species instead of trees and shrubs. One commenter requested a list of ''acceptable'' native plant species for vegetated buffers.

Permittees are encouraged to plant vegetated buffers with native species, but this is not an absolute requirement. Vegetated buffers should be planted with native species, but a well-established vegetated buffer that contains some non-native species should not be removed and replaced. We recognize that there are circumstances where non-native species may be more appropriate. The planting of native species is important for the habitat functions of vegetated buffers. We encourage permittees to plant seedlings and saplings of trees in the vegetated buffer, but permittees can plant herbaceous vegetation in the vegetated buffer and allow natural succession processes to allow a woody plant community to develop at a later time. We do not agree that it is necessary to provide a list of ''acceptable'' native species that should be planted in vegetated buffers.

One commenter requested clarification whether vegetated buffers must be grassed or wooded. Another commenter objected to wooded vegetated buffers because they would impede flood flows and increase erosion. One commenter stated that wooded vegetated buffers would cause a loss of hydraulic capacity of the channel.

Vegetated buffers should have woody vegetation because woody plants, especially trees, are important components of an effective vegetated buffer. Woody plants, especially trees, provide shade to the open waters, as well as substantial amounts of detritus that is an important component of aquatic food webs. Woody vegetation in riparian zones often slows the velocity of floodwaters, which can provide water quality benefits by allowing sediment to drop out of suspension and decrease the sediment load in the water column. We do not agree that vegetated buffers increase erosion. The roots of woody vegetation help stabilize the soil, thereby decreasing erosion. Although woody vegetation, especially tree falls that create snags, may reduce the hydraulic capacity of a stream channel, it is important to consider the ecological functions and values of the stream, not just the hydraulic capacity of the stream channel and water conveyance. With the new and modified NWPs, we are placing greater emphasis on protecting open waters, especially streams.

One commenter supported the Corps statement in the July 21, 1999, **Federal Register** notice that mowed lawns are not considered vegetated buffers. Several commenters objected to this statement and believe that mowed lawns should be considered vegetated buffers.

We do not consider mowed lawns next to streams and other open waters as vegetated buffers because mowed lawns do not provide most of the functions and values that a vegetated buffer inhabited by trees or shrubs would provide. For example, mowed lawns cannot shade streams to moderate water temperature changes or produce

woody debris that creates important aquatic habitat. In many areas, mowed lawns are intensively managed through the application of fertilizers, herbicides, and pesticides. Intensively managed mowed lawns next to streams can exacerbate water quality problems that vegetated buffers are intended to address. Since mowed lawns next to streams and other open waters do not provide the functions and values that wooded vegetated buffers provide, it would be inappropriate to consider mowed lawns next to streams and other open waters as compensatory mitigation for activities authorized by NWPs.

One commenter said that the requirement for vegetated buffers is inconsistent with the proposed NWP definitions. For example, the definition for the term ''compensatory mitigation'' does not include vegetated buffers that are established and maintained on uplands next to streams and other open waters. This commenter also contends that vegetated buffers cannot be considered enhancement because the proposed NWP definition for this term is limited to activities in aquatic habitats that increase one or more aquatic functions.

The establishment and maintenance of vegetated buffers next to streams and other open waters as compensatory mitigation is not inconsistent with the definition of the term ''compensatory mitigation'' provided in the ''Definitions'' section of the NWPs. The planting of trees and shrubs next to a stream in a pasture enhances the quality of the stream. Stream restoration activities usually involve planting the upland or wetland riparian zone with trees and shrubs. We have added a definition of the term ''vegetated buffer'' in the ''Definitions'' section of the NWPs.

One commenter requested that the Corps provide guidance concerning the specific amount of vegetated buffer that will be required as compensatory mitigation to offset losses of waters of the United States. Two commenters stated that vegetated buffers should be an additional requirement after the permittee has provided full compensation for wetland losses. A commenter asked if vegetated buffers alone can be used to satisfy compensatory mitigation requirements for the NWPs. This commenter also stated that, in many cases, vegetated buffers already exist on site and that the preservation of these areas is strongly discouraged by Corps mitigation policy because of the ''no net loss'' goal. This commenter believes that the vegetated buffer requirement is contrary to Corps mitigation policy.

We have modified General Condition 19 to provide guidance regarding the proportion of compensatory mitigation that should consist of vegetated buffers. If there are open waters on the project site and the district engineer requires compensatory mitigation for wetland impacts to ensure that the net adverse effects on the aquatic environment are minimal, any vegetated buffer will comprise a portion or all of the remaining compensatory mitigation acreage after the permanently filled wetlands have been replaced at a one-to-one acreage basis. By using vegetated buffers as compensatory mitigation, the quality of open waters will be protected or enhanced by maintaining these vegetated areas if they already exist on the site. If the vegetated buffer is not used as compensatory mitigation, then the permittee could cut down the existing vegetation next to the open waters (which often does not require a DA permit), which would adversely affect the quality of the open waters. Programmatically, the Corps will continue to support the ''no net loss'' goal for wetlands, but the establishment and maintenance of vegetated buffers for NWP activities will provide substantial benefits for open waters, especially streams.

Many commenters stated that the vegetated buffer requirement is problematic for companies and agencies that do not own the property where the vegetated buffer would be located on the project site. For example, the authority of flood control agencies is often limited to the channel, not to the land adjacent to the channel. As another example, utility companies have limited easement rights in utility line rights-of-way and cannot impose deed restrictions or conservation easements in these areas. Numerous commenters said that vegetated buffers should not be required where the project proponent does not own the land next to the open waters on the project site. Several commenters stated that the costs for public agencies to obtain rights-of-way to establish and maintain vegetative buffers will be prohibitive or economically impractical.

District engineers will not normally require vegetated buffers next to streams and other open waters if the permittee does not own the land next to the open waterbody. Such vegetated buffers will only be required where the permittee has or can reasonably obtain the appropriate conservation easements. Likewise, vegetated buffers are not required in utility line easements. However, if the utility company is building a substation on its land and there are open waters on the project site, the district engineer can require vegetated buffers next to those open waters as compensatory mitigation.

Two commenters said that vegetated buffers are impractical in urban areas where most of the surface runoff is directed to storm drain pipes, not streams. A commenter stated that maintaining vegetated buffers adjacent to facilities built by developers but handed over to local governments would increase costs to those local governments. Another commenter said that the vegetated buffer requirement will increase project and maintenance costs for state Department of Transportation projects. Two commenters assert that the vegetated buffer requirement will make maintenance of authorized facilities difficult or prohibitive. One commenter requested clarification whether a vegetated buffer disturbed during a maintenance activity will require additional mitigation or whether the project proponent would be required only to replace the disturbed vegetation.

If it is impractical to establish and maintain vegetated buffers next to streams in urban areas because of the limited amount of available land, then vegetated buffers are not required. In these circumstances, off-site compensatory mitigation may be preferable, including off-site vegetated buffers. If vegetated buffers next to open waters would make the maintenance of facilities in waters of the United States too costly, then other forms of compensatory mitigation should be considered. We do not agree that the vegetated buffer requirement would increase costs for transportation projects, because these activities usually require compensatory mitigation. If it is necessary to disturb the vegetated buffer during maintenance activities, the project proponent is only required to allow the vegetation to grow back. Additional compensatory mitigation will not be required for the disturbance of a vegetated buffer if it is allowed to grow back.

Several commenters said that vegetated buffers should not be required for activities authorized by NWPs 3 or 12. One commenter indicated that vegetated buffers should not be required for linear transportation crossings that are constructed perpendicular to the stream. Another commenter said that vegetated buffers should not be required for flood control maintenance activities.

District engineers can require vegetated buffers for activities that involve discharges of dredged or fill material into waters of the United States if there are open waters on the project site. Activities authorized by NWP 3 typically do not require compensatory

mitigation, including vegetated buffers. There may be circumstances where vegetated buffers will be required for utility line activities, if compensatory mitigation is necessary to ensure that the adverse effects on the aquatic environment are minimal. Activities authorized by NWP 31 usually would not require vegetated buffers, especially if the flood control authority does not own the land next to the flood control facility or compensatory mitigation was required for the construction of the facility or previous maintenance activities.

Regional Conditioning

One commenter supported the Corps increased emphasis on regional conditioning to ensure that the new and modified NWPs authorize only those activities that result in minimal adverse effects on the aquatic environment. Numerous commenters objected to imposing regional conditions on the new and modified NWPs and stated that the Corps should rely on case-specific special conditions instead of regional conditions. Several commenters said that regional conditioning of the NWPs is unnecessary and contrary to the purpose of the NWPs, which is to authorize activities that have minimal adverse effects. Two commenters suggested that the Corps impose more stringent national terms and conditions on the NWPs instead of relying on regional conditions. One commenter indicated that the Corps reliance on regional conditions for the new and modified NWPs demonstrates that these NWPs authorize activities with more than minimal adverse effects. Two commenters said that regional conditions do not provide adequate protection for wetlands.

We do not agree that only case-specific special conditions should be added to NWPs. Regional conditions are more effective at ensuring that NWPs authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively. Regional conditions also benefit the regulated public by providing them with advance notice of additional NWP restrictions and promoting consistency in the implementation of the NWP program. Regional conditions are necessary because aquatic resource functions and values vary considerably across the country. Utilization of regional conditions is not contrary to the NWP program because those conditions help ensure that the NWPs do not authorize activities with more than minimal adverse effects on the aquatic environment.

Imposing more stringent national terms and limitations on the NWPs instead of imposing regional conditions would not be a practical alternative, because it would severely limit the ability of the NWPs to authorize many activities that have minimal adverse effects on the aquatic environment. It is far more efficient to develop NWPs that authorize most activities that have minimal adverse effects on the aquatic environment and allow division and district engineers to limit the use of these NWPs or exercise discretionary authority in specific situations that may result in more than minimal adverse effects on the aquatic environment. For particular regions of the country or specific waterbodies where additional safeguards are necessary to ensure that the NWPs authorize only those activities with minimal adverse effects, regional conditions are the appropriate mechanism. Case-specific discretionary authority or special conditions cannot substitute for regional conditions in many cases, especially for those NWP activities that do not require notification to the District Engineer. For example, regional conditions can lower PCN thresholds for activities in high value waters to allow district engineers to review those activities and determine if the work can be authorized by NWPs. Division and district engineers are much more knowledgeable about local aquatic resource functions and values and can prohibit or limit the use of the NWPs in high value waters. We contend that regional conditioning of the NWPs provides effective protection for high value wetlands and other aquatic habitats.

Several commenters indicated that regional conditions should be more consistent between Corps districts. One of these commenters also stated that regional conditions should be based on environmental factors and climate, not political boundaries. One commenter recommended Corps division boundaries as the smallest unit for consistency in regional conditions. Another commenter suggested state boundaries as the smallest unit for consistency of regional conditions. Several commenters said that regional conditions make it more difficult for companies that work in more than one state to efficiently manage their operations to comply with the NWPs.

To a certain extent, regional conditions are based on environmental factors but it is usually necessary to provide some consistency within political boundaries, such as state boundaries. Consistency within a particular state is beneficial to the regulated public because it results in more effective cooperation between state agencies, such as the state agencies responsible for making Section 401 and CZMA determinations, and the Corps. In those states where more than one Corps district is present, we have recommended that those Corps districts develop, to the extent practicable, consistent regional conditions statewide. However, we recognize that there may be certain regions within a state, such as specific high value waterbodies, that may warrant regional conditions that are not necessary in other areas of that state. Different regional conditions can be imposed in those unique situations. Within Corps division boundaries, there is often wide variability in aquatic resource functions and values. Therefore, consistency in regional conditions at a scale larger than a state is contrary to the purpose of the regional conditioning process, which is to consider local differences in aquatic resource functions and values to ensure that the NWPs do not authorize activities with more than minimal adverse effects on the aquatic environment. Companies that work in more than one Corps district or more than one state will have to comply with the regional conditions established in each district or within each state.

One commenter stated that the Corps assertion that regional conditions cannot be elevated to headquarters is inconsistent with the regional conditioning process established in the July 1, 1998, **Federal Register** notice. Three commenters indicated that division engineers should be able to increase the acreage limit of an NWP or delete or modify conditions of an NWP through regional conditions and recommended that the Corps revise its regulations to provide division engineers with such authority.

The authority to require regional conditions lies solely with division engineers and cannot be elevated to the Headquarters level. The regulations for the NWPs (33 CFR Part 330) clearly state that the modification, suspension, or revocation of any NWP on a regional basis is the decision of the division engineer. The regional conditioning process described in the July 1, 1998, **Federal Register** notice did not include elevation of NWP regional conditions to headquarters. Meetings between Corps district commanders and Regional Administrators of EPA and Regional Directors of the U.S. Fish and Wildlife Service and National Marine Fisheries Service were to occur to discuss proposed regional conditions and resolve any disputes concerning those regional conditions (see 63 FR 36048).

As discussed in the July 21, 1999, **Federal Register** notice, division and district engineers cannot use regional conditioning to make the NWPs less restrictive. Only the Chief of Engineers can modify an NWP to make it less restrictive, if it is in the national public interest to do so. Such a modification must go through a public notice and comment process. However, if a Corps district determines that regional general permits (RGPs) are necessary for activities not authorized by NWPs, then that district can develop and implement regional general permits to authorize those activities, as long as those regional general permits comply with Section 404(e) of the Clean Water Act. However, we have established a six month moratorium on RGPs and LOPs that are germane to the new and modified NWPs to allow districts time to assess the true need for such RGPs and LOPs.

One commenter stated that the regional conditioning process violates the Administrative Procedures Act and that proposed regional conditions must be published in the **Federal Register** for comment. This commenter said that posting draft regional conditions on Internet home pages provides inadequate notice because most citizens do not use the Internet. This commenter also requested that the Corps publish a notice in the **Federal Register** that includes all proposed regional conditions to solicit public comments on those regional conditions. Several commenters objected to the regional conditioning process because all draft regional conditions were not available when the July 21, 1999, **Federal Register** notice was published. Two commenters said that regional conditions should not be drafted or subject to comment until the new and modified NWPs are issued.

Regional conditions for the NWPs do not need to be published in the **Federal Register** for public comment. It is important to remember that regional conditions are issued by division commanders, not Corps headquarters. District public notices for regional conditions provide adequate opportunities for public comment. Since the proposed regional conditions do not affect the process for issuing the new and modified NWPs, we do not agree that it was necessary to have all draft regional conditions posted on district Internet home pages at the same time the July 21, 1999, **Federal Register** notice was published. The 75-day comment period provided adequate opportunities for the public to consider both the July 21, 1999, **Federal Register** notice and all draft regional conditions proposed by Corps districts.

One commenter stated that it is difficult for prospective permittees to determine in which district their activities would occur and recommended that the Corps make maps of district boundaries available. One commenter suggested that high value waters subject to regional conditioning include warm water fisheries and waters with benthic macroinvertebrates.

The Corps has a general map of Corps division and district boundaries that is available on the Internet at http://www.usace.army.mil/inet/locations/bdry-pages/. This interactive map also provides links to Corps district home pages. Due to the scale of this map and since most Corps district boundaries are based on watershed boundaries, prospective permittees should contact the nearest Corps district office to determine which Corps district will review their PCN or permit application. Division engineers can determine that waters of the United States supporting warm water fisheries or benthic macroinvertebrates are high value waters that should be subject to regional conditioning.

Essential Fish Habitat

For the proposed new and modified NWPs published in the July 21, 1999, **Federal Register** notice, we conducted programmatic Essential Fish Habitat (EFH) consultation with the National Marine Fisheries Service (NMFS), pursuant to Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act. In response to our request for programmatic consultation, NMFS made two programmatic EFH conservation recommendations. The first EFH conservation recommendation was for Corps districts to work with NMFS regional offices to the extent necessary to develop NWP regional conditions that conserve EFH and are consistent with NMFS regional EFH conservation recommendations. The second EFH conservation recommendation indicated that paragraph (e) of General Condition 13, which states that district engineers will provide no responses to resource agency comments on PCNs, should not apply to EFH conservation recommendations provided by NMFS.

We concur with both of these EFH conservation recommendations. We have directed our district offices in geographic regions with EFH to coordinate with NMFS regional offices to develop, to the extent necessary, regional conditions for the new and modified NWPs that conserve EFH and are consistent with NMFS regional EFH conservation recommendations. In addition, we have added a sentence to paragraph (e) of General Condition 13 to require district engineers to respond to NMFS within 30 days of receipt of any EFH conservation recommendations. This requirement is necessary to comply with section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

Workload Implications of the New and Modified Nationwide Permits

A large number of commenters stated that the lower acreage limits and PCN requirements of the new and modified NWPs, as well as the three proposed general conditions, will result in substantial increases in the number of standard permit applications processed by the Corps and processing times for all Section 404 permits. Many commenters objected to the proposed NWPs because the Corps did not explain how it will handle the increase in workload. A number of commenters said that if the proposed changes to the NWP program are implemented, the Corps will need to increase its resources to process the additional standard applications and PCNs in a timely manner. One commenter said that the cumulative impact analysis requirements will increase the Corps workload while another commenter cited regional conditions as another factor that will increase the Corps workload.

One commenter predicted that the Corps will experience an increase of 17,000 individual permit applications per year. Another commenter estimated an increase of 2,000 individual permits per year as a result of the proposed changes. This commenter also predicted that average individual permit processing times will increase from 89 days to 350 days over the next six years and estimates that the permit application carryover will double during that time period.

The workload and compliance costs study conducted by IWR, and mentioned above in the overview, for the proposal published in the July 21, 1999, **Federal Register** showed that the proposed NWP package would result in a 50% increase in the number of standard individual permit applications received by the Corps per year. The study estimated that the Corps would receive 4,429 additional standard permit applications per year and receive 2,878 fewer NWP PCNs per year. As a result of the increased standard permit workload, the average amount of time that it takes for the Corps to process permit applications would increase three to four times within five years. Likewise, the permit application

backlog would increase by the same amount during that five year period.

The changes to the new and modified NWP issued today, including the ½ acre limit and the modification of the general condition for fills in 100-year floodplains, are estimated to result in 40% fewer standard permit applications compared to the proposal published in the July 21, 1999, **Federal Register**. Also, the standard permit processing times and the permit application backlog would increase by one and a half to two times the amount for FY 1998.

We have also reviewed an analysis, based on the July 21, 1999, proposal, that was conducted on behalf of the National Association of Counties. This analysis examined the impacts of the July 21, 1999, proposal on the Corps workload and costs to the Corps and the regulated public.

We have not proposed any changes to our approach for analyzing cumulative adverse effects on the aquatic environment cause by NWPs. Therefore, cumulative adverse effect analysis will not impose additional workload on Corps district offices. Although regional conditions will cause some increases in the Corps workload, those increases are manageable and necessary to ensure that the NWPs do not authorize activities that result in more than minimal adverse effects on the aquatic environment.

One commenter said that the increases in workload caused by the three proposed general conditions are offset by the increased scope of applicable waters for these NWPs, because many of these activities would have required individual permits when NWP 26 was in place. In contrast, another commenter stated that the proposed NWPs will result in more individual permit applications because the new NWPs do not authorize activities in tidal waters.

We do not agree that the larger geographic scope of the new NWPs, when compared to the geographic scope of NWP 26, will offset the increase in workload caused by the new NWP general conditions. For example, General Condition 26 prohibits discharges of dredged or fill material into waters of the United States within 100-year floodplains of stream segments below headwaters. Since NWP 26 did not authorize discharges of dredged or fill material into tidal waters, prohibiting the use of the new NWPs in tidal waters will not cause any increases in the number of individual permit applications processed by the Corps.

Other Issues

In response to the July 21, 1999, **Federal Register** notice, some commenters raised additional issues related to the new and modified NWPs. Several commenters expressed concern that none of the new and modified NWPs authorize oil and gas development facilities. These commenters said that NWP 26 was used to authorize these facilities where no regional general permits (RGPs) are available and recommended that the Corps develop such an NWP. One commenter suggested that the Corps modify NWP 39 to authorize oil and gas wells as industrial facilities.

When we developed the new and modified NWPs that will replace NWP 26, we considered an NWP to authorize oil and gas facilities. However, when we surveyed Corps districts to determine how frequently such an NWP would be used, we found that there was little need for this NWP because most of the districts that frequently authorize oil and gas facilities have issued RGPs to authorize these activities. The development of RGPs for this activity is more appropriate than developing a new NWP. We do not agree with the recommendation to modify NWP 39 to authorize these activities, because NWP 39 authorizes building pads and attendant features, and oil and gas wells are not buildings.

Two commenters recommended that the Corps develop an NWP to authorize the construction of fish passage facilities and other stream enhancement activities, such as relocating a portion of a stream channel to provide proper alignment for fish passage, because these activities were authorized by NWP 26.

We do not agree that there is sufficient need to develop a new NWP to authorize the construction of fish passage facilities. Stream enhancement activities may be authorized by NWP 27, provided the proposed work meets the terms and conditions of this NWP. Discharges into waters of the United States associated with the construction of fish passage facilities may also be authorized by other NWPs, RGPs, or individual permits.

Several commenters requested that the Corps reverse its decision to withdraw NWP B, which was proposed in the July 1, 1998, **Federal Register** notice to authorize master planned development activities. One of these commenters stated that the withdrawal of proposed NWP B is contrary to ''smart growth'' initiatives.

Our decision to withdraw NWP B is discussed in the October 14, 1998, and July 21, 1999, **Federal Register** notices. We have not changed our position on this matter, but we could propose an NWP for master planned development activities at a later time. We do not agree that the withdrawal of NWP B is contrary to smart growth initiatives, because developments that are part of smart growth planning efforts can be authorized by other NWPs, such as NWP 39, RGPs, and individual permits.

One commenter objected to the draft NWPs, stating that they do not authorize certain activities associated with railroad operations, such as the completion of drainage improvements along unstable embankments, bank stabilization to protect tracks from slide events, small fills associated with the installation of signals and switches, and the construction of miscellaneous structures associated with railroad tracks.

Some of these activities can be authorized by existing NWPs, including some of the NWPs modified today. For example, bank stabilization activities to protect railroad tracks from slide events may be authorized by NWP 13. Small fills associated with the installation of signals, switches, and minor drainage improvements may be authorized by NWP 18. NWP 14 may also be used to authorize some activities associated with railroads, since railways are linear transportation projects. These activities can also be authorized by RGPs and individual permits, if they do not qualify for authorization under the NWP program.

Two commenters said that a new NWP should be developed to authorize the construction of flood control improvements, including structures and fills for flood control facilities. Two commenters stated that the new and modified NWPs and regional conditions will make it more difficult to maintain a previously authorized flood-control facility.

We do not agree that a new NWP should be developed for the construction of flood control facilities. Such activities are likely to result in more than minimal adverse effects on the aquatic environment by reducing or eliminating the natural functions and values of open waters, including streams, and floodplains. Flood control activities may be authorized by NWPs, RGPs, or individual permits. The new and modified NWPs will not make it more difficult to maintain flood control facilities. We have withdrawn the proposed general condition for impaired waters. General Condition 26, Fills in 100-year Floodplains, does not apply to NWP 31, which authorizes the

maintenance of existing flood control facilities.

One commenter requested that the Corps develop a new NWP to authorize abandoned mined land cleanup activities, since NWP 27 does not authorize all of these activities. This commenter said that NWP 26 was used to authorize these activities.

During the reissuance process for the existing NWPs that will begin in 2001, we will consider developing an NWP to authorize discharges of dredged or fill material into waters of the United States for abandoned mined land cleanup projects.

One commenter recommended that the Corps revoke the NWPs in all watersheds or sub-basins that have exceeded 8% imperviousness. Another commenter suggested that the Corps condition the NWPs to encourage or require planting of native plant species in areas that are impacted by NWP activities, because such a condition would support Executive Order 13112, entitled ''Invasive Species.'' Two commenters said that the Corps should develop and implement a classification system that assesses the potential for restoring or enhancing degraded wetlands to encourage restoration or enhancement, instead of issuing permits to fill these areas.

We do not agree that the NWPs should be revoked simply because the amount of impervious surface within a particular watershed has exceeded a certain threshold. District engineers will monitor the use of the NWPs to ensure that the NWPs do not authorize activities with more than minimal adverse effects on the aquatic environment, individually or cumulatively. We cannot require all permittees to plant native species at sites impacted by activities authorized by NWPs, but they are encouraged for vegetated buffers. While we encourage restoration and enhancement of degraded wetlands as compensatory mitigation for activities authorized by DA permits, including NWPs, we cannot develop a classification system to identify these areas and prohibit discharges of dredged or fill material into those waters.

Two commenters requested that the final notice announcing the issuance of the new and modified NWPs include a statement that the three new NWP conditions proposed in the July 21, 1999, **Federal Register** notice should not become conditions on all Corps permits, including individual permits. Two commenters said that any regional general permits or Section 404 letters of permission issued by Corps districts must include the three proposed new NWP general conditions.

We agree that the proposed general conditions limiting the use of NWPs in designated critical resource waters, impaired waters, and waters of the United States within 100-year floodplains should not be incorporated into all Corps permits. RGPs issued by Corps districts can authorize only activities that result in minimal adverse effects on the aquatic environment. Since RGPs are local solutions for implementing the Corps regulatory program, these general permits will thoroughly address local concerns for the aquatic environment. Therefore, it is not necessary for all RGPs issued by district engineers to contain conditions limiting their use in designated critical resource waters, impaired waters, and waters of the United States within 100-year floodplains. Standard permits are subject to the public interest review process, which considers impacts to public interest factors, including critical resource waters, impaired waters, and waters of the United States within 100-year floodplains.

One commenter recommended that the **Federal Register** notice announcing the final new and modified NWPs contain a compilation of all regulatory information concerning the NWPs to make the preamble discussions available to the regulated public. Another commenter indicated that the Corps cannot issue provisional NWP authorizations in states that have denied water quality certification for those NWPs.

All **Federal Register** notices concerning the new and modified NWPs are currently available to the public. Due to the length of these notices and the many changes that have occurred since these NWPs were initially proposed on July 1, 1998, it would be impractical to compile the preambles for all of these notices into one document. In the July 21, 1999, **Federal Register** notice (64 FR 39261), we addressed comments concerning the issuance of provisional NWP verifications and we have not changed our position on this matter.

One commenter said that the new NWPs and general conditions should not become effective until six to nine months after the new NWPs are issued, so that activities that have already been planned can proceed under the NWPs issued in 1996. One commenter objected to using NWPs to authorize the expansion of existing projects, stating that this discourages avoidance and minimization of losses of waters of the United States. One commenter stated that the new and modified NWPs should address impacts to prior converted cropland. Several commenters said that NWP 29 should be revoked.

The new and modified NWPs, including the new and modified general conditions, will become effective on June 5, 2000. Until the effective date of the new and modified NWPs and general conditions, the current NWPs (as published in the December 13, 1996, **Federal Register**) are applicable. Permittees that begin work, or are under contract to begin work, prior to the effective date of the new and modified NWPs, have one year to complete the work under the term and conditions of the NWPs issued in 1996. However, in a notice published in the December 15, 1999, issue of the **Federal Register** (64 FR 69994), we established a procedure for processing NWP 26 PCNs. We do not agree that a longer implementation schedule is necessary. In addition, an extended implementation schedule would be contrary to our intent to replace NWP 26 with activity-specific NWPs that authorize activities with minimal adverse effects on the aquatic environment.

The use of NWPs to authorize the expansion of existing projects does not discourage avoidance and minimization of activities in waters of the United States. These activities are required to comply with all NWP terms and conditions, including General Condition 19, and must result only in minimal adverse effects on the aquatic environment. The new and modified NWPs do not need to address impacts to prior converted cropland, since these areas are not waters of the United States. If prior converted cropland is abandoned and reverts back to jurisdictional wetlands, then those areas are subject to the permit requirements of Section 404 of the Clean Water Act. We do not agree that NWP 29 should be revoked, since it authorizes single family housing activities with minimal adverse effects on the aquatic environment.

III. Comments and Responses on Specific Nationwide Permits

3. Maintenance: In the July 21, 1999, **Federal Register** notice, we proposed to modify this NWP to authorize the removal of accumulated sediment in the vicinity of existing structures and authorize activities in waters of the United States associated with the restoration of uplands damaged by storms, floods, or other events. These additional activities are in paragraphs (ii) and (iii), respectively, of this NWP.

One commenter said that the proposed modifications are not

maintenance activities and should not be authorized by this NWP. Some commenters requested clarification whether this NWP only applies to activities not statutorily exempt under section 404(f)(1)(B) of the Clean Water Act. One commenter objected to this NWP, stating that it is used to change existing projects to different use categories. Another commenter asked what is meant by the phrase ''minor deviations in the structure's configuration or filled area.''

We believe that the activities authorized by paragraphs (ii) and (iii) of this NWP are maintenance activities. The note at the end of this NWP states that NWP 3 authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemptions for maintenance. The first sentence of paragraph (i) explicitly states that NWP 3 does not authorize changes in use for the authorized structure or fill. The phrase ''minor deviations in the structure's configuration or filled area'' allows the project proponent to make minor changes to a previously authorized structure or fill during the repair or maintenance activity so that the structure or fill complies with current construction standards or other regulations.

Several commenters supported the removal of the notification requirement from paragraph (i) of this NWP. One commenter said that replacement activities should allow reconfiguration of structures such as marina piers. One commenter believes that paragraph (i) contains contradictory language because it authorizes the repair, replacement, or rehabilitation of previously authorized, currently serviceable structures or fills and the replacement of structures destroyed by storms. Another commenter said that some maintenance activities take longer than two years and recommended that the NWP be modified to accommodate those longer repair periods. One commenter recommended that the NWP authorize the use of cofferdams during maintenance activities.

The reconfiguration of marinas is authorized by NWP 28. The reconfiguration of other types of structures may be authorized by other NWPs, regional general permits, or individual permits. Authorizing the repair of currently serviceable structures or fills and the replacement of structures or fills damaged by storms, floods, or other discrete events is not contradictory because both of these activities are maintenance activities that typically have minimal adverse effects on the aquatic environment. These provisions are also consistent with the Section 404(f) exemptions for maintenance. We do not agree that it is necessary to increase the two-year limit for maintenance activities because this amount of time is adequate for most maintenance activities. In addition, NWP 3 contains a provision that allows district engineers to waive this time limit. The use of cofferdams during maintenance activities may be authorized by NWP 33.

Some commenters recommended removing the proposed limitations in paragraph (ii) of NWP 3. Several commenters suggested adding acreage limits to paragraph (ii) and others suggested that the 200 linear foot limit should be reduced to 50 feet. One commenter stated that this provision is unnecessary and that NWP 3 should not be modified to authorize this activity. Another commenter said that paragraph (ii) should not authorize the installation of rip rap.

We believe that the 200 linear foot limit for the removal of accumulated sediments in the vicinity of existing structures is appropriate and will ensure that this NWP authorizes only activities with minimal adverse effects on the aquatic environment. The removal of accumulated sediments allows structures to continue to function properly and ensure the safety of the users of the structure. The installation of rip rap is often necessary to protect these structures after the accumulated sediment is removed and should be authorized by this NWP as part of the single and complete project.

One commenter supported paragraph (iii) of the proposed modification of NWP 3, which authorizes activities in waters of the United States associated with the restoration of uplands damaged by storms and other discrete events. One commenter said that paragraph (iii) is unnecessary because these activities should be considered exempt and bank stabilization can be authorized by NWP 13. One commenter stated that the activities authorized by paragraph (iii) will have more than minimal adverse effects on the aquatic environment. Two commenters objected to the proposed modification, stating that it would prevent natural stream processes from occurring and allow stream channelization. A commenter said that this NWP should not authorize bank stabilization activities in floodplains. Another commenter stated that separate authorization should not be required if excavated material is used to replace material that is lost as a result of erosion. One commenter recommended modifying the text of paragraph (iii) to state that the NWP does not authorize the replacement of uplands lost through gradual erosion processes.

The intent of paragraph (iii) of NWP 3 is to authorize activities in waters of the United States associated with the replacement of uplands that are damaged as a result of storms and other catastrophic events. The restoration of uplands damaged as a result of storms and other catastrophic events is exempt from Section 404 permit requirements, as long as the upland area is replaced to its original extent. For example, a hurricane may cause substantial erosion and destroy a section of a road constructed in uplands or on a permitted fill. The restoration of those uplands or the permitted fill and the replacement of the destroyed road are exempt from Section 404 permit requirements, provided the area is repaired to its original extent. However, the restoration work may involve activities in waters of the United States, which are authorized by paragraph (iii), provided those activities comply with the terms and conditions of NWP 3. We maintain our position that this is a maintenance activity that should be authorized by NWP 3. Paragraph (iii) does not authorize new stream channelization or stream relocation activities. We believe that bank stabilization is a necessary component of this activity and should be authorized by paragraph (iii) as part of the single and complete project. We concur with the last comment in the previous paragraph and have made the appropriate modification of the text of paragraph (iii).

One commenter indicated that the district engineer should have discretion over which flood damage repair activities require notification and another commenter said that notification should not be required for any of these activities. One commenter suggested that the 50 cubic yard limit for removal of obstructions should be replaced with 500 linear foot and ⅓ acre limits.

We contend that notification should be required for all of the activities authorized by paragraph (iii) to ensure that these activities result in minimal adverse effects on the aquatic environment. We do not agree that the 50 cubic yard limit for the removal of obstructions should be replaced with 500 linear foot or ⅓ acre limits.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The

issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which requires notification for activities in designated critical resource waters. NWP 3 is reissued with the modifications discussed above.

7. *Outfall Structures and Maintenance:* In the July 21, 1999, **Federal Register** notice, we proposed to modify NWP 7 to authorize maintenance excavation, including dredging, to remove accumulated sediments from intake or outfall structures and canals associated with these structures.

Several commenters stated that the maintenance activities authorized by the proposed modification of this NWP are exempt from permit requirements. Numerous commenters indicated that the removal of accumulated sediments should be authorized by NWP 3 and that the modification of this NWP is unnecessary. Several commenters requested clarification regarding what types of maintenance activities are authorized by this NWP. Another commenter said that the Corps should withdraw the proposed modification. This commenter also recommended prohibiting removal of material in special aquatic sites and small impoundments. One commenter said that the construction of outfall structures that does not involve discharges of dredged or fill material into waters of the United States should not require a Corps permit.

Maintenance dredging to remove accumulated sediments from intake and outfall structures in Section 10 waters is not exempt from Corps permit requirements. Although the removal of accumulated sediments in the vicinity of existing structures is authorized by paragraph (ii) of NWP 3, there are maintenance dredging or excavation activities associated with intake and outfall structures that do not meet the terms and conditions of NWP 3 and could be authorized by NWP 7. The text of this NWP clearly states which maintenance activities are authorized by NWP 7. District engineers will review PCNs for maintenance activities in special aquatic sites and small impoundments to ensure that the adverse effects on the aquatic environment are minimal. Outfall structures constructed in Section 10 waters require a Corps permit, even if there are no associated discharges of dredged or fill material into waters of the United States.

One commenter said that acreage and linear limits should be imposed on this NWP. Several commenters contend that this NWP should not authorize activities in tidal waters or special aquatic sites. One commenter stated that this NWP should not authorize maintenance activities associated with aquaculture facilities or power plants. A commenter remarked that maintenance excavation and dredging activities could result in more than minimal adverse effects on the aquatic environment and that notification should be required for all activities authorized by this NWP. Another commenter objected to the requirement for notification for all activities authorized by this NWP.

We do not agree that it is necessary to impose acreage or linear foot limits on the activities authorized by this NWP or restrict the applicable waters because all activities authorized by this NWP require notification to the district engineer. The removal of accumulated sediments from outfall and intake structures associated with aquaculture facilities and power plants is necessary to ensure the efficient operation of these installations. The district engineer will review these PCNs to ensure that the NWP authorizes only those activities with minimal adverse effects on the aquatic environment.

One commenter said that delineations of special aquatic sites should be limited to the impact area or within 200 feet of the proposed activity. Two commenters stated that it is unnecessary to require delineations of special aquatic sites since this NWP authorizes maintenance activities. One commenter remarked that there should be a provision in the NWP that allows maintenance of existing structures when the original design capacities and configurations are not available. Another commenter said that paragraph (d) of the proposed modification should be removed because this requirement is already addressed by General Condition 3.

The text of this NWP states that the requirement for delineations of special aquatic sites is limited to the vicinity of the proposed work. The delineation of special aquatic sites, especially vegetated shallows, is necessary to ensure that the NWP authorizes only activities with minimal adverse effects on the aquatic environment. If the original design capacities and configurations of the facility are not available, district engineers will use their judgement to determine if the proposed work is authorized by this NWP. The requirements of paragraph (d) of this NWP and General Condition 3 are not the same. Therefore, we believe that paragraph (d) is necessary to ensure that NWP 7 authorizes only activities with minimal adverse effects on the aquatic environment.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. NWP 7 is reissued with the modifications discussed above.

12. Utility Line Activities: In the July 21, 1999, **Federal Register** notice, we proposed to modify NWP 12 to authorize utility line substations; foundations for overhead utility line towers, poles, and anchors; and permanent access roads for the construction and maintenance of utility lines.

Many commenters supported the proposed modifications, but a few commenters opposed the proposed modifications. Several commenters believe that this NWP will authorize activities with more than minimal adverse effects on the aquatic environment. One commenter said that NWP 12 should have a maximum limit of 2 acres for a single and complete utility line activity and another commenter suggested a ⅓ acre limit. One commenter supported the ¼ acre PCN threshold and also recommended requiring notification for activities that result in the loss of greater than 100 linear feet of stream bed, with agency coordination for activities that result in the loss of greater than 250 linear feet of stream bed. Another commenter said that the PCN threshold should be ⅓ acre. One commenter requested clarification concerning the emergency authorization of utility line activities.

The terms and conditions of this NWP, including PCN requirements, will ensure that NWP 12 will authorize only activities with minimal individual and cumulative adverse effects on the aquatic environment. We do not agree that an overall acreage limit is appropriate for this NWP, since many of the impacts to waters of the United States caused by the construction and maintenance of utility lines will be temporary. Acreage limits and PCN thresholds for specific activities authorized by this NWP are discussed below. This NWP can be used to authorize the emergency installation,

replacement, or repair of utility lines in waters of the United States. Emergency procedures for the Corps regulatory program are discussed in 33 CFR 325.2(e)(4).

One commenter said that this NWP is too restrictive for the installation of underground gas transmission lines. Two commenters stated that this NWP should authorize wireless communication towers. Another commenter suggested that well drilling fluid flowlines should be authorized by this NWP. One commenter said that pipeline maintenance activities should be exempt from permit requirements. A commenter stated that PCNs should be required for all underground utility lines to ensure that the installation of those utility lines does not drain wetlands. Another commenter said that sidecast material from utility line installation should be removed within 30 days. One commenter indicated that utility lines constructed in waters of the United States parallel to streambeds should be limited to 500 feet in length to ensure that those activities result in minimal adverse effects on the aquatic environment.

This NWP authorizes the construction, maintenance, and repair of utility lines, including underground gas transmission lines, that have minimal adverse effects on the aquatic environment. We do not agree that the terms for underground transmission lines are too restrictive. This NWP does not authorize wireless communication towers because these facilities are not utility lines. Well drilling fluid flowlines are not authorized by this NWP, because they are not utility lines. The construction or installation of wireless communication towers or well drilling fluid flowlines in waters of the United States can be authorized by individual permits, regional general permits, or other NWPs. Pipeline maintenance activities can be authorized by this NWP or NWP 3, although some pipeline maintenance activities may be eligible for the Section 404(f) exemption. This NWP contains specific terms to ensure that the installation of utility lines does not drain wetlands. This NWP does not authorize the installation of utility lines that result in french drains. We believe that the 180 day limit is appropriate for temporary sidecasting of excavated material, but division engineers can regionally condition this NWP to reduce this time period, if such a reduction is necessary to ensure that the NWP authorizes only activities with minimal adverse effects. Paragraph (d) of the ''Notification'' section of this NWP will allow district engineers to review proposed utility lines to be installed in waters of the United States parallel to stream beds and ensure that these activities result in minimal adverse effects on the aquatic environment.

One commenter requested clarification whether a Corps permit is required if the United States Coast Guard does not require a permit under Section 9 of Rivers and Harbors Act. Another commenter said that pipelines are transportation structures.

A Section 10 permit is not required for utility lines constructed over navigable waters of the United States to transport gaseous, liquid, liquifiable, or slurry substances, because these structures are considered bridges which are regulated under Section 9, not Section 10, of the Rivers and Harbors Act. Pipelines constructed over navigable waters may be considered bridges under Section 9 of the Rivers and Harbors Act.

Two commenters supported the inclusion of utility line substations in the proposed modification of this NWP. One commenter said that the acreage limit of utility line substations should be ¼ acre. Several commenters recommended adding ''storage facilities'' to paragraph (ii) to authorize these activities with utility line substations. Two commenters requested a definition of the term ''substation.'' One commenter said that this NWP should not authorize the construction of substations in floodplains. Another commenter stated that electric and pumping substations should be sited in uplands.

We have changed the acreage limit for the construction or expansion of utility line substations to ½ acre, to ensure that this NWP authorizes only activities with minimal adverse effects on the aquatic environment. Notification is required for discharges of dredged or fill material resulting in the loss of greater than ⅒ acre of non-tidal waters of the United States for the construction or expansion of utility line substations.

We do not agree that storage facilities should be included with utility line substations. These facilities may be authorized by NWPs, regional general permits, or individual permits. The term ''utility line substations'' includes power line substations, lift stations, pumping stations, meter stations, compressor stations, valve stations, small pipeline platforms, and other facilities integral to the operation of a utility line. There are situations where utility line substations must be located in waters of the United States within 100-year floodplains or other waters of the United States. Utility line substations constructed in waters of the United States within 100-year floodplains must comply with General Condition 26.

One commenter recommended limiting foundations for overhead utility line towers, poles, and anchors to 1 acre or 250 linear foot of stream bed. This commenter also said that losses of waters of the United States resulting from the installation of overhead utility line towers, anchors, and poles should be included with the impacts caused by utility line substations when determining if an activity meets the acreage limits of this NWP.

We do not believe it is necessary to impose an acreage limit on foundations for overhead utility line towers, poles, and anchors, but division engineers can regionally condition this NWP to impose such limits if it is necessary to ensure that the NWP authorizes only activities with minimal adverse effects on the aquatic environment. We do not agree that foundations for overhead utility line towers, poles, and anchors should be included with the acreage limit for utility line substations. For those utility line activities that require notification, district engineers will review PCNs to ensure that these activities result in minimal adverse effects on the aquatic environment.

One commenter objected to the proposed modification to authorize the construction of permanent access roads in waters of the United States. Another commenter asked whether permanent or temporary access roads are authorized by paragraph (iv) of this NWP. One commenter said that the 1 acre limit is too high and recommended a ⅒ acre limit for permanent access roads. Another commenter recommended a 250 linear foot limit on stream bed impacts for the construction of access roads. One commenter asked if the 500 linear foot PCN threshold for permanent access roads constructed above-grade in waters of the United States applies to an entire project or a single crossing.

Permanent access roads are necessary for the operation and maintenance of utility lines and should be authorized by this NWP as part of a single and complete utility line project. Paragraph (iv) of the NWP authorizes only permanent access roads; temporary access roads can be authorized by NWP 33. We have changed the acreage limit for above-grade permanent access roads to ½ acre, to ensure that this NWP authorizes activities with minimal adverse effects on the aquatic environment. We do not agree that it is necessary to impose a 250 linear foot limit on stream bed impacts for access roads, since most of the access roads will be constructed perpendicular to

streams. The 500 linear foot PCN threshold for access roads applies to each single and complete crossing (see 33 CFR 330.2(i)).

One commenter supported the provision requiring access roads to be constructed with pervious surfaces. Two commenters objected to this requirement. One of these commenters noted that it may not be possible to utilize pervious surfaces, because those materials may not be practicable, stable, or safe in certain situations.

We have deleted the last sentence of paragraph (iv) to allow this NWP to authorize permanent access roads constructed with impervious material. However, to ensure that permanent access roads constructed with impervious material result in minimal adverse effects on the aquatic environment, we have added paragraph (g) to the ''Notification'' section to require notification when access roads for utility lines are constructed with impervious materials.

One commenter requested clarification whether this NWP authorizes mechanized landclearing necessary to maintain a previously established utility line right-of-way. One commenter said that this NWP should not authorize mechanized landclearing of forested wetlands, unless the acreage and functions of those wetlands are replaced. Several commenters objected to the requirement for mitigation to offset permanent adverse effects to waters of the United States, such as the conversion of forested wetlands to emergent wetlands in permanently maintained utility line right-of-ways. One commenter objected to the language in the NWP that excludes temporary adverse effects due to filling, flooding, excavation, or drainage from the calculation of permanent losses of waters of the United States. One commenter said that mitigation plans should be required with all PCNs. Two commenters supported the Corps position that it does not regulate groundwater flow. Another commenter said that this NWP should be conditioned to prohibit impacts to groundwater.

This NWP authorizes mechanized landclearing that is necessary to maintain an existing utility line right-of-way, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as close as possible. District engineers will require mitigation for the permanent conversion of wetland types to ensure that utility line activities will result in minimal adverse effects on the aquatic environment. Impacts to waters of the United States due to temporary filling, flooding, excavation, or drainage should not be considered as permanent losses, because this NWP requires the restoration of temporarily affected waters of the United States. We do not agree that it is necessary to require the submission of mitigation plans with all PCNs, because compensatory mitigation is not required for all utility line activities. We maintain our position that we do not regulate groundwater flows, but district engineers may consider adverse effects to groundwater when reviewing PCNs.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. For utility line activities resulting in discharges of dredged or fill material into waters of the United States within 100-year floodplains, General Condition 26 requires the permittee to notify the district engineer and demonstrate that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. NWP 12 is reissued with the modifications discussed above.

14. Linear Transportation Crossings: In the July 21, 1999, **Federal Register** notice, we proposed to modify NWP 14 to authorize the construction, expansion, modification, or improvement of linear transportation crossings, with a higher acreage limit for public linear transportation crossings constructed in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters.

Two commenters said that the proposed modification of NWP 14 will authorize activities with more than minimal adverse effects on aquatic environment. Two commenters said that this NWP should have the same terms and conditions as NWPs 41 and 43 because these NWPs authorize similar activities.

The terms and conditions of this NWP will ensure that only activities with minimal adverse effects on the aquatic environment will be authorized. Most activities authorized by this NWP require notification to the district engineer, which will allow case-by-case review of proposed NWP 14 activities. NWPs 14, 41, and 43 authorize distinctly different activities and should not contain the same terms. However, these NWPs can be combined to authorize a single and complete project, provided the activity complies with General Condition 15.

One commenter supported limiting the modification of this NWP to the authorization of linear transportation crossings. Another commenter said that this NWP should not authorize new linear transportation crossings. A commenter stated that the maintenance of road crossings should be exempt from permit requirements and that NWP 14 should be needed only for the construction of new crossings. One commenter indicated that this NWP should be limited to the construction of span bridges and should not authorize culverted crossings. A commenter said that the NWP should authorize integral features associated with the linear transportation crossing. One commenter objected to the proposed modification, stating that it should not authorize the expansion of airport runways. Two commenters said that the term ''public-use airport'' should be used when describing airport runways that are to be used by the general public and considered as public transportation crossings.

We have not changed the categories of authorized activities from the proposed modification of NWP 14 published in the July 21, 1999, **Federal Register** notice. Some road crossing maintenance activities may qualify for the Section 404(f) exemption and not require a DA permit. Maintenance activities that require changes in the configuration or design of the linear transportation crossing are authorized by this NWP, provided the work meets the terms and conditions of the NWP and results in minimal adverse effects on the aquatic environment. We do not agree that this NWP should be limited to span bridges. Culverts and fords can be used to construct linear transportation crossings that have minimal adverse effects on the aquatic environment. Features that are an integral part of the linear transportation crossing, such as interchanges, rail spurs, stormwater detention basins, and water quality enhancement measures are authorized by this NWP. However, this NWP can be combined with other NWPs to authorize a single and complete project provided the activity complies with the requirements of General Condition 15. We maintain our position that this NWP should authorize the expansion of airport runways. We do not agree that it is necessary to incorporate the term ''public-use airport'' in the text of the NWP. District engineers will determine on a case-by-case basis whether the

construction of a linear transportation crossing for an airport is a public or private activity.

Several commenters objected to the differentiation between public and private linear transportation crossings for the acreage limits of the proposed modification of this NWP. Two commenters agreed that public linear transportation crossings should have higher acreage limits under this NWP. One commenter requested clearer definitions of the terms ''public'' and ''private'' as used in the context of this NWP. This commenter asked if the determination whether a particular activity is public or private depends upon the users of the linear transportation crossing or the project proponent. For example, if a private developer is required to build a road that will be used by the general public as a condition of subdivision approval, would that road be considered a public or private road for the purposes of this NWP?

We maintain our position that public linear transportation crossings should have a higher acreage limit because they fulfill a larger proportion of public interest factors and the government agencies that typically sponsor and build these projects have the resources necessary to ensure that these projects have minimal adverse effects on the aquatic environment. Public transportation projects often require detailed planning processes to document compliance with the National Environmental Policy Act, Section 404 of the Clean Water Act, and other applicable laws. As a result, we have decided that it is appropriate to impose a higher acreage limit for public linear transportation projects in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters.

Public linear transportation crossings are available for use by the general public. Private linear transportation crossings are restricted to use by an individual or a specific group of individuals. The users of the crossing determine whether the crossing is public or private, not the builder of the transportation crossing. Public roads that are constructed as a condition of subdivision approval and will be used by the general public are considered public linear transportation crossings for the purposes of this NWP.

Many commenters recommended a 2 acre limit for public linear transportation crossings. One commenter suggested a 3 acre limit. Two commenters said that the 1 acre limit for public linear transportation crossings is too low. Several commenters stated that this NWP should have a ⅓ acre limit. One commenter said that the length of fill should not exceed 200 feet and another commenter remarked that the 200 foot restriction for fills should be removed from the NWP. Two commenters recommended replacing the 200 foot limit with a 500 foot limit. One commenter suggested a 500 linear foot limit for stream bed impacts.

We have determined that the maximum acreage limit for this NWP should be ½ acre, to ensure that this NWP only authorizes activities with minimal adverse effects on the aquatic environment. For public linear transportation crossings constructed in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, the acreage limit will be ½ acre. For public linear transportation crossings in tidal waters or non-tidal wetlands adjacent to tidal waters, the acreage limit will be ⅓ acre. For private linear transportation crossings, the acreage limit will be ⅓ acre. The 200 foot limit for the length of fill in waters of the United States will be retained for public linear transportation crossings constructed in tidal waters or non-tidal wetlands adjacent to tidal waters and for private linear transportation crossings.

One commenter said that PCNs should be required for all activities authorized by this NWP. Several commenters recommended a PCN threshold of ⅓ acre. Two commenters suggested that PCNs should be required for discharges of dredged or fill material resulting in the loss of greater than 500 linear feet of stream bed. Three commenters said that notification should not be required for all discharges into special aquatic sites. One commenter requested clarification concerning when a PCN is required for discharges into waters of the United States that are not special aquatic sites.

We have modified this NWP to require notification for discharges of dredged or fill material resulting in the loss of greater than 1/10 acre of waters of the United States. We are retaining the notification requirement for all discharges of dredged or fill material into special aquatic sites. If the proposed work does not involve discharges of dredged or fill material into special aquatic sites, the prospective permittee is required to notify the district engineer if the proposed work will result in the loss of greater than 1/10 acre of waters of the United States.

One commenter asked if the acreage limits for this NWP apply only to permanent losses of waters of the United States. Three commenters requested clarification whether the requirement for a mitigation proposal in paragraph (c) applies to the mitigation process (i.e., avoidance, minimization, and compensation) or only to compensatory mitigation. One commenter said that there should be an acreage threshold for the requirements of paragraph (c). One commenter said that mitigation should be required for all impacts to waters of the United States and another commenter stated that mitigation should be required for discharges resulting in the loss of greater than 1 acre of waters of the United States.

In accordance with the definition of the term ''loss of waters of the United States'' in the ''Definitions'' section of the NWPs, the acreage limit applies only to permanent losses of waters of the United States. We have inserted the word ''compensatory'' before the phrase word ''mitigation proposal'' in paragraph (c) to clarify that the prospective permittee must submit a compensatory mitigation proposal with the PCN. The requirement for a compensatory mitigation proposal applies only to those activities that require notification. District engineers can determine, on a case-by-case basis, that compensatory mitigation is not necessary to offset losses of waters of the United States because the work, without compensatory mitigation, will result in minimal adverse effects on the aquatic environment. We have also inserted the phrase ''of waters of the United States'' after the term ''temporary losses'' in paragraph (c) to clarify that the required statement must address temporary losses of waters of the United States.

One commenter suggested that notification should be required if NWP 14 was previously used to authorize a road crossing on the same waterbody. Another commenter objected to considering each crossing of a separate waterbody as a distinct single and complete project. One commenter said that the second sentence of paragraph (h) should be deleted because it contradicts the definition of the term ''single and complete project.''

Since notification is required for all discharges of dredged or fill material into special aquatic sites and discharges resulting in the loss of greater than 1/10 acre of waters of the United States, most activities authorized by this NWP will require notification to the district engineer. If NWP 14 is used more than once by different project proponents to cross a single waterbody, the district engineer will assess the adverse effects on the aquatic environment and determine if those adverse effects are minimal. The second sentence of

paragraph (h) does not contradict the Corps definition of the term ''single and complete project'' at 33 CFR 330.2(i).

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. For linear transportation crossings resulting in discharges of dredged or fill material into waters of the United States within 100-year floodplains, General Condition 26 requires the permittee to notify the district engineer and demonstrate that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. NWP 14 is reissued with the modifications discussed above.

27. Stream and Wetland Restoration Activities: In the July 21, 1999, **Federal Register** notice, we proposed to modify NWP 27 to authorize the restoration of tidal waters and the restoration and enhancement of non-tidal streams and non-tidal open waters.

One commenter supported the expansion of this NWP to tidal waters. This commenter requested clarification regarding which restoration activities can occur in Section 10 waters and tidal waters. One commenter said that the title of this NWP should be changed to include creation activities. This commenter asked for clarification concerning the types of wetland creation activities that are authorized by this NWP. This commenter said that a Corps permit should be required only if the wetland creation activity includes connecting the wetland creation site to waters of the United States. One commenter said that restoration activities should be limited to restoring areas to their historic state and another commenter stated that NWP 27 should authorize activities that are part of a watershed improvement plan. One commenter said that this NWP should have enforceable conditions and permittees should be required to obtain restoration agreements that are approved by the Corps and the resource agencies. One commenter recommended a 2 acre limit for this NWP. Another commenter recommended that the Corps add a note to this NWP that is similar to the note at the end of NWP 39, which describes open waters of the United States.

This NWP authorizes the restoration of former tidal waters, the enhancement of degraded tidal wetlands, and the creation of tidal wetlands. We do not agree that it is necessary to include the word ''creation'' in the title of this NWP, since it is clearly indicated in the first paragraph of this NWP that wetland creation activities are authorized. This NWP provides authorization for all wetland creation activities, provided those activities comply with the terms and conditions of this NWP. Wetland creation activities that do not involve discharges of dredged or fill material into waters of the United States do not require a Section 404 permit. We do not agree that this NWP should be limited to restoring wetlands to their historic state, because restoration projects result in net improvements to the aquatic environment, even though they may not restore former waters to their historic state. This NWP can authorize the restoration, enhancement, and creation of aquatic habitats that are part of a watershed improvement plan.

We do not agree that it is necessary to execute restoration agreements for all activities authorized by this NWP. Such a provision would likely to discourage landowners from conducting these activities. Since this NWP authorizes activities that benefit the aquatic environment, an acreage limit would be counterproductive. The activities authorized by this NWP either require notification to the district engineer or involve oversight by other Federal agencies, which will ensure that only activities that benefit the aquatic environment are authorized by this NWP. A definition of the term ''open water'' is included in the ''Definitions'' section of the NWPs. Therefore, it is not necessary to include a note in this NWP.

One commenter said that this NWP should authorize the restoration and enhancement of tidal wetlands and streams. Another commenter stated that NWP 27 should authorize restoration, enhancement, and creation activities in drainage ditches, because it is difficult to distinguish between drainage ditches and streams in the mid-West. Several commenters believe that significant stream destruction can be authorized by this NWP and suggested imposing a limit of 250 linear feet on stream impacts.

This NWP authorizes the restoration and enhancement of tidal wetlands, but it does not authorize the restoration of tidal streams, particularly the open water areas of tidal streams. However, the restoration and enhancement of riparian zones next to tidal streams is authorized by this NWP. The restoration of tidal streams is not authorized by NWP 27 because changes in tidal aquatic habitats may result in more than minimal adverse effects on the aquatic environment. The restoration of tidal streams can be authorized by individual permits or regional general permits. This NWP authorizes the restoration and enhancement of non-tidal streams that were channelized to create drainage ditches, including the restoration and enhancement of riparian zones next to those streams. Since the activities authorized by NWP 27 benefit the aquatic environment and most activities require notification or oversight by other agencies, we do not agree that it is necessary to impose a linear limit on stream impacts.

One commenter said that this NWP should authorize only those activities that are conducted or sponsored by Federal or state agencies. Two commenters support the use of this NWP to authorize the restoration of aquatic habitats on public or private land. One commenter stated that the recommendation in paragraph (c) to plant native species on the project site should be modified to require the permittee to use local sources of plant materials.

Limiting this NWP to activities conducted or sponsored by Federal or state agencies would preclude the use of an NWP for many aquatic habitat restoration, enhancement, and creation activities conducted by private individuals that benefit the aquatic environment. We do not agree that permittees should be required to use local sources of plant materials.

One commenter objected to the provision that allows the relocation of aquatic habitats on the project site, stating that this provision is contrary to the avoidance and minimization requirements of the NWPs. Another commenter said that the relocation of aquatic habitats should be authorized only when it is ecologically preferable than avoidance and minimization. This commenter also requested that the NWP contain a provision that requires the relocated waters to be equal or greater in acreage than the waters of the United States filled as a result of the authorized activity. One commenter indicated that the relocation of aquatic habitats on the project site should not be authorized by this NWP.

Allowing the relocation of non-tidal waters on the project site is not contrary to General Condition 19 because NWP 27 requires authorized activities to result in net gains in aquatic resource functions and values. We are retaining

the provision that allows the relocation of non-tidal waters on the project site.

One commenter opposed the use of rip rap for activities authorized by this NWP and another commenter supported the use of rip rap. One commenter said that the removal of accumulated sediments requires a Corps permit only when the work is conducted in navigable waters (i.e., Section 10 waters). Another commenter asked if the removal of accumulated sediments is authorized only once or if this activity can occur for the duration of the project to maintain the restored areas. One commenter stated that this NWP should also authorize the management of the restored, created, or enhanced waters.

Rip rap provides habitat for many species of aquatic organisms and its use should be authorized by this NWP, provided the authorized work results in net gains in aquatic resource functions and values. The Corps regulatory authority regarding excavation activities in waters of the United States is addressed in a previous section of this **Federal Register** notice. The removal of accumulated sediments is authorized by this NWP as often as necessary to maintain the restored areas, although the permittee should endeavor to locate the sediment source and try to stabilize that area to reduce inputs of sediment in the restored waters. This NWP authorizes activities necessary to maintain the restored, enhanced, or created aquatic habitats.

One commenter asked for a definition of the term ''small'' water control structure. This commenter recommended defining a small water control structure as a structure that impounds water to a maximum depth of 2.5 feet or less. This commenter also requested clarification concerning the extent of mechanized landclearing activities that are authorized by this NWP to remove undesirable vegetation. This commenter said that mechanized landclearing should be limited to establishing or maintaining native herbaceous wetland plant species and selected plant species that provide food for wildlife. This commenter recommended limiting mechanized landclearing to vegetation that has a diameter at breast height of 4 inches or less.

We do not believe that it is necessary to specify the dimensions of small water control structures that are authorized by this NWP. For those activities that require notification, the district engineer will determine whether the water control structure is authorized by this NWP. This NWP authorizes mechanized landclearing to remove undesirable vegetation and we recommend replacing the removed vegetation with native plant species. We do not agree that mechanized landclearing activities authorized by this NWP should be limited to vegetated that has a diameter at breast height of 4 inches or less, because the proposed work may require the removal of larger undesirable trees.

One commenter supported the provision that the conversion of natural wetlands to another aquatic use is not authorized by NWP 27. Two commenters stated that the construction of water impoundments should not be authorized by this NWP. One commenter opposed the prohibition against the impoundment of streams or the conversion of forested wetlands to construct waterfowl impoundments, because this commenter believes that these activities benefit the aquatic environment. This commenter supports the term of NWP 27 that prohibits the channelization of streams.

We maintain our position that this NWP should not authorize the impoundment of streams or the conversion of forested wetlands to construct waterfowl impoundments. These activities often result in more than minimal adverse effects to the aquatic environment by destroying or degrading habitat that is utilized by many other species of wildlife. However, open water impoundments can be created from uplands on the project site or by converting a non-tidal emergent or scrub-shrub wetland, provided that wetland type is recreated elsewhere on the project site and there are net gains in aquatic resource functions and values on the project site.

One commenter stated that all reversion activities on agricultural lands should be authorized by NWP 40 and all reversion activities on reclaimed surface coal mined lands should be authorized by NWP 21. Another commenter requested clarification of the provision that authorizes the reversion of wetlands restored, created, or enhanced on prior converted cropland. This commenter also suggested that a five year time limit for reversions should apply to agreements with the U.S. FWS or NRCS that do not have time limits. One commenter stated that the paragraph of NWP 27 that address reversion activities implies that the Corps is asserting jurisdiction over wetlands that were created on prior converted cropland, even though a Corps permit was not required to restore wetlands on that cropland. This commenter said that the Corps cannot consider all created wetlands to be jurisdictional wetlands.

It is more appropriate to authorize reversion activities by NWP 27, since this NWP was likely to be used to authorize the initial wetland restoration, enhancement, or creation activity. This NWP authorizes the reversion of wetlands that were restored, enhanced, or created on prior converted cropland that has not been abandoned, because prior converted croplands are not waters of the United States and a Section 404 permit is not required for discharges of dredged or fill material into prior converted cropland. We do not agree that it is necessary to impose a five year limit for reversions on U.S. FWS or NRCS agreements that do not have time limits. A Section 404 permit is not required to revert wetlands that are not considered waters of the United States.

One commenter supported the note in the proposed modification of NWP 27, which states that compensatory mitigation is not required for activities authorized by this NWP, provided there are net increases in aquatic resource functions and values in the project area. Two commenters said that this NWP should be used to authorize all compensatory mitigation projects. One commenter supports the use of NWP 27 to authorize the establishment of mitigation banks. Many commenters objected to the use of NWP 27 to authorize discharges of dredged or fill material into waters of the United States to construct mitigation banks. Several commenters oppose this provision, stating that mitigation banks should be subject to public comment because they affect local development patterns and land prices. The Corps received comments that it appeared that NWP 27 could be used to authorized mitigation banks that may not have been approved by an Interagency Mitigation Banking Review Team. That was not our intent. NWP 27 can only be used to authorize impacts at a mitigation bank that has been approved under the National Interagency Federal Mitigation Banking Guidance.

We maintain our position that NWP 27 may be used to authorize compensatory mitigation projects, including mitigation banks, that involve activities in waters of the United States, provided the work results in a net increase in aquatic resource functions and values in the project area. The use of NWP 27 to authorize mitigation banks does not override the Federal guidance for the establishment, use, and operation of mitigation banks that was issued in 1995. We do not agree that it is necessary to require individual permits for all mitigation banks, because they benefit the aquatic environment.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that

the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which requires notification for activities in designated critical resource waters. NWP 27 is reissued with the modifications discussed above.

39. Residential, Commercial, and Institutional Developments: In the July 21, 1999, **Federal Register** notice, we proposed to issue an NWP to authorize discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction of building pads, building foundations, and attendant features for residential, commercial, and institutional developments.

Many commenters opposed the issuance of the proposed NWP. Two commenters said that this NWP should authorize discharges of dredged or fill material into non-tidal wetlands that are adjacent to tidal waters.

We believe that the scope of waters for this NWP is appropriate to ensure that NWP 39 authorizes only those residential, commercial, and institutional development activities that have minimal adverse effects on the aquatic environment.

One commenter said that this NWP should authorize only single and complete projects that consist of buildings and attached or integral attendant features. This commenter indicated that this NWP should not authorize the expansion of existing developments. Several commenters stated that golf courses should not be authorized by this NWP because they are not necessary for residential developments. Another commenter said that this NWP should authorize discharges of dredged or fill material into waters of the United States for the construction of ski areas, since they are not more environmentally harmful than golf courses.

We maintain our position that this NWP should authorize building pads and attendant features for residential, commercial, and institutional development activities. Attendant features should not be limited to structures or fills that are attached to buildings. This NWP can be used to authorize the expansion of existing developments, provided the adverse effects on the aquatic environment are minimal, individually and cumulatively. Many residential subdivisions are constructed with golf courses as important attendant features. These types of residential communities are marketed as golf course communities. We do not agree that ski areas are attendant features of residential communities in the same manner as golf courses. Ski resorts are usually constructed first, with residences constructed at a later time.

A large number of commenters supported the indexed acreage limit for NWP 39 that was proposed in the July 21, 1999, **Federal Register** notice. Many commenters opposed the proposed indexed acreage limit. Two commenters objected to the indexed acreage limit, stating that minimal impact determinations are based on the size and quality of the aquatic resources, not the size of the parcel owned by the applicant. A commenter remarked that the indexed acreage limit will encourage developers to build larger projects to qualify for higher acreage limits. Three commenters said that an indexed acreage limit based on project size will not ensure minimal adverse effects on the aquatic environment. Numerous commenters stated that the maximum 3 acre limit is too high. Several commenters said that the maximum indexed acreage limit should be 1 acre. Another commenter suggested a maximum indexed acreage limit of 10 acres. Several commenters recommended that the Corps impose a simple 5 acre limit for this NWP. A number of commenters suggested a simple 10 acre limit for discharges of dredged or fill material into ephemeral streams.

To ensure that this NWP authorizes only activities with minimal adverse effects on the aquatic environment, we have decided to impose a simple ½ acre limit on NWP 39. We have not adopted the indexed acreage limit, which will make NWP 39 easier to implement for both the Corps and the regulated public.

Various commenters suggested 100, 200, 250, and 500 linear foot limitations for stream impacts. One commenter said that NWP 39 should have a limit for perennial and intermittent stream bed impacts.

We have added a 300 linear foot limit for stream bed impacts (i.e., filling and excavating perennial and intermittent stream bed) to this NWP at paragraph (b). Division engineers can regionally condition this NWP to decrease the 300 linear foot limit for filling and excavating stream bed.

Several commenters suggested a PCN threshold of ⅓ acre. Another commenter said that PCNs should be required for all NWP 39 activities. One commenter stated that notification should be required for discharges resulting in the loss of greater than 500 linear feet of stream bed. One commenter said that a PCN should be required for discharges of dredged or fill material that result in the permanent loss of open waters, not all discharges into open waters. A commenter requested clarification of the PCN thresholds of NWP 39. One commenter said that notification should not be required for discharges into intermittent streams. One commenter recommended removing the phrase ''including wetlands'' at the end of paragraph (c) of the proposed NWP.

To ensure that district engineers will have the opportunity to review all activities that could result in more than minimal adverse effects on the aquatic environment, we have reduced the PCN threshold to 1/10 acre. We are retaining the requirement for notification for all discharges into open waters. The latter notification requirement applies to both temporary and permanent losses of open waters. Notification is not required for all activities authorized by NWP 39. Discharges of dredged or fill material that result in the loss of 1/10 acre or less of non-tidal wetlands do not require the submission of a PCN to the district engineer, although a post-construction notification is required (see paragraph (i)). We have removed the phrase ''including wetlands'' at the end of paragraph (d) (paragraph (c) of the proposed NWP).

One commenter said that paragraph (d) of the proposed NWP 39 (now designated as paragraph (e)) should not imply that this NWP can be used more than once for the same activity.

Paragraph (e) requires the discharge of dredged or fill material into waters of the United States for the residential, commercial, or institutional development activity to be for a single and complete project. NWP 39 can be used more than once for a single and complete project, provided the combined losses of waters of the United States from all of the phases of that single and complete project do not exceed the ½ acre or the 300 linear foot limits for NWP 39.

One commenter expressed support for the statement of avoidance and minimization that is required by paragraph (e) of the proposed NWP 39 (now designated as paragraph (f)). Two commenters stated that the requirement for a written avoidance and minimization statement is similar to an alternatives analysis and would be cost-prohibitive for many mid-sized activities. Another commenter opposed this requirement because the NWP

regulations already require avoidance and minimization.

We are retaining the requirement for the submission of a written statement explaining how avoidance and minimization of losses of waters of the United States was achieved on the project site. This statement should consist of a brief explanation that discusses how the activity was planned to avoid and minimize losses of waters of the United States on-site to the maximum extent practicable. An exhaustive analysis is not required. The required statement will document compliance with General Condition 19 and will help expedite reviews of PCNs by district engineers.

One commenter supported the mitigation requirements for NWP 39. Two commenters stated that compensatory mitigation should be required for all activities authorized by this NWP. Another commenter said that compensatory mitigation should be required for activities that require notification. Two commenters stated that the provision of paragraph (e) of the proposed NWP 39 (now designated as paragraph (f)) that provides the prospective permittee with the opportunity to submit justification explaining why compensatory mitigation is unnecessary should be deleted because it is inconsistent with the compensatory mitigation requirements of the other NWPs. One commenter recommended including a reference to the mitigation provisions in General Conditions 13 and 19 in paragraph (e) of the proposed NWP 39. Another commenter said that all prospective permittees should be required to submit detailed mitigation plans with the PCN.

As discussed elsewhere in this **Federal Register** notice, compensatory mitigation will normally be required for those activities that require notification to the district engineer, to ensure that the authorized work results in minimal adverse effects on the aquatic environment. If the proposed work will result in minimal adverse effects on the aquatic environment without compensatory mitigation, then the district engineer can issue an NWP verification without special conditions that require compensatory mitigation. Allowing the prospective permittee to submit a statement with the PCN to assert that compensatory mitigation is unnecessary to ensure minimal adverse effects is not contrary to the compensatory mitigation requirements of the NWPs. District engineers can determine that compensatory mitigation is necessary to ensure that the adverse effects on the aquatic environment are minimal, even though the prospective permittee may believe that compensatory mitigation should not be required. We have added text to paragraph (f) that refers to General Condition 19, which contains the mitigation requirements for the NWPs. As discussed in the section addressing the NWP general conditions, we have moved the compensatory mitigation information from paragraph (g) of General Condition 13 to General Condition 19. We maintain our position that the prospective permittee can submit either conceptual or detailed compensatory mitigation plans with the PCN. Detailed compensatory mitigation plans can be required as special conditions of the NWP authorization.

One commenter requested clarification of the phrase ''minimal degradation of water quality,'' which appears in paragraph (g) of the proposed NWP 39, because it could be subject to broad interpretation.

The requirements of paragraph (g) (now designated as paragraph (h)) are intended to reinforce the fact that the NWPs can authorize only activities with minimal adverse effects on the aquatic environment, by focusing on two important aspects of the aquatic environment that can be altered by NWP activities, namely water quality and stream flows.

Two commenters object to the requirements of paragraph (h) of the proposed NWP 39 (now designated as paragraph (i)) because it infers that mitigation is required for activities that do not require notification. Another commenter identified an inconsistency in this paragraph, because it contains a reference to stream impacts and this commenter noted that NWP 39 requires notification for all discharges of dredged or fill material into streams.

Compensatory mitigation is not required for those NWP activities that do not require notification to the district engineer. However, compensatory mitigation to offset losses of waters of the United States may be required by state or local permits, which should be reported to the Corps through the post-construction notification required by paragraph (i). We have removed the references to stream bed impacts from paragraph (i), since the NWP requires notification for all discharges into open waters.

One commenter opposed the provisions of paragraph (i) of the proposed NWP 39 (now designated as paragraph (j)), which requires the permittee to establish and maintain, to the maximum extent practicable, vegetated buffers next to open or streams within the project area. Another commenter said that Federal and state lands should be required to have a management plan instead of deed restrictions for vegetated buffers.

The requirements for vegetated buffers next to open waters are discussed in detail in a previous section of this **Federal Register** notice. There is flexibility in the requirements of paragraph (j). If there are open waters or streams within the project area and it is impractical for the project proponent to establish and maintain vegetated buffers next to those waters, then those vegetated buffers are not required. However, other types of compensatory mitigation may be required to ensure that the work results in minimal adverse effects on the aquatic environment. District engineers will determine, on a case-by-case basis, when it is practicable to establish and maintain vegetated buffers and the appropriate width of those vegetated buffers.

Several commenters opposed paragraph (j) of the proposed NWP 39 (now designated as paragraph (k)), which prohibits stream channelization or stream relocation downstream of the point on the stream where the average annual flow is 1 cubic foot per second (cfs). One commenter supported this provision. Some of these commenters indicated that this provision will be difficult to implement in areas with many ephemeral streams. Other commenters stated that this requirement is difficult to implement because it will be expensive and time consuming to determine where the 1 cfs point occurs. One commenter suggested that stream channelization or relocation activities should be limited to ephemeral streams instead of prohibiting these activities downstream of the 1 cfs point. Another commenter recommended replacing the 1 cfs criterion with either a prohibition against channelizing perennial streams or utilizing drainage area instead of average annual flow. This commenter suggested applying the prohibition to streams with a drainage area greater than 250 acres.

We discussed the identification of the 1 cfs point on streams in a previous section of this **Federal Register** notice. Drainage area, based on regional criteria, can be used to approximate the location of the 1 cfs point on a stream. We believe that the prohibition in paragraph (k) is necessary to ensure that NWP 39 authorizes only activities with minimal adverse effects on the aquatic environment. This provision is consistent with the increased emphasis we are placing on the protection of open and flowing waters.

Several commenters objected to allowing project proponents to construct

their activities in phases. Numerous commenters said that NWP 39 should not be used with NWP 14 because it will authorize activities that exceed the acreage limit of NWP 39.

District engineers will review PCNs for phased construction projects to determine if those activities comply with the terms and conditions of the NWPs. District engineers will also review the PCNs for these activities to ensure that they result in minimal adverse effects on the aquatic environment. General Condition 15 states that when more than one NWP is used to authorize a single and complete project, that single and complete project is subject to the highest specified acreage limit of those NWPs. Therefore, when NWP 14 is combined with NWP 39 to authorize a single and complete project, the total project acreage limit will be ½ acre.

One commenter asked how a project proponent would know if NWP 40, as it was issued in 1996, was used to construct a farm building that was more than 500 feet from a waterbody, if that land was sold to build a residential, commercial, or institutional development on the land. One commenter objected to the restrictions relating the use of NWP 39 and NWP 40 on the same parcel, but another commenter supported these restrictions.

The limitations for the use of NWPs 39 and 40 on the same parcel apply only to those activities authorized by the NWPs issued today, because the previous version of NWP 40 authorized discharges of dredged or fill material into farmed wetlands for the construction of farm buildings. We are retaining the provisions limiting the use of NWPs 39 and 40 on the same parcel.

Several commenters objected to the subdivision provision in NWP 39, stating that it will allow the authorization of activities with more than minimal adverse effects on the aquatic environment. One commenter requested clarification whether the subdivision provision applies to all of the terms of NWP 39 or whether it only addresses the acreage limits for each parcel within the subdivision. This commenter also indicated that if the district engineer grants an exemption pursuant to the subdivision provision, then the landowner can use NWP 26 to authorize the development activity. Another commenter said that only NWP 29 should be used to authorize activities on individual lots within an exempted subdivision.

The notification requirements of the subdivision provision will ensure that NWP 39 will authorize only activities with minimal adverse effects on the aquatic environment. District engineers can assert discretionary authority if the proposed work will result in more than minimal adverse effects on the aquatic environment. The subdivision provision addresses only the acreage limits for the subdivision, or the individual parcels within that subdivision if an exemption has been granted by the district engineer. The subdivision provision does not keep NWP 26 in effect for those activities that have been granted an exemption by the district engineer. If an exemption has been granted, the activities on individual parcels must comply with the terms and conditions of NWP 39. We do not agree that activities on individual lots should be eligible only for NWP 29 if an exemption has been granted, because other types of buildings may be constructed on these lots, with minimal adverse effects on the aquatic environment.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. For NWP 39 activities resulting in discharges of dredged or fill material into waters of the United States within 100-year floodplains, General Condition 26 requires the permittee to notify the district engineer and demonstrate that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. Furthermore, General Condition 26 prohibits any above-grade fill under NWP 39 within regulatory floodways above the headwaters. NWP 39 is issued with the modifications discussed above.

40. Agricultural Activities: In the July 21, 1999, **Federal Register** notice, we proposed to modify NWP 40 to authorize discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to improve agricultural production.

A large number of commenters expressed opposition to the proposed modification of this NWP. Many commenters said that the use of this NWP will result in substantial losses of wetlands and some commenters stated that the activities authorized by this NWP will result in more than minimal adverse effects on the aquatic environment. Numerous commenters said that the proposed modification of NWP 40 violates the Clean Water Act because it authorizes discharges of dredged or fill material that result in the loss of agricultural wetlands. Some commenters stated that the proposed modification is unnecessary because on-going farming activities are exempt from Section 404 permit requirements. One commenter said that the proposed modification is contrary to other Federal programs, such as the Wetlands Reserve Program and the Conservation Reserve Program. One commenter indicated that the text of this NWP should reference the wetland conservation provisions of the ''Food Security Act of 1985, as amended.''

NRCS will review those activities authorized by paragraph (a) and district engineers will review most activities authorized by paragraphs (b), (c), and (d) to ensure that the activities authorized by this NWP do not result in more than minimal adverse effects on the aquatic environment. The use of this NWP will not result in substantial losses of wetlands. Compensatory mitigation will be required for most activities authorized by this NWP to offset losses of waters of the United States and ensure that the authorized work results in minimal adverse effects on the aquatic environment.

The modification of NWP 40 does not violate the Clean Water Act, because the Clean Water Act does not prohibit discharges of dredged or fill material into waters of the United States to increase agricultural production. The Clean Water Act merely requires a permit for such activities. The conversion of wetlands to increase agricultural production is not exempt from Section 404 permit requirements. The proposed modification of NWP 40 is not contrary to the Wetlands Reserve Program or the Conservation Reserve Program. We have modified the text of the NWP to refer to the ''Food Security Act of 1985, as amended.''

One commenter said that the proposed modification of NWP 40 should authorize activities in non-tidal wetlands adjacent to tidal waters to increase the utility of this NWP in coastal areas. Several commenters stated that this NWP should be restricted to frequently cropped wetlands. Many commenters stated that this NWP should not authorize activities in playas, prairie potholes, and vernal pools. Three commenters indicated that this NWP should not authorize activities within 100 feet of playas, prairie potholes, and vernal pools. Another commenter said that this NWP will authorize the destruction of streams.

We do not agree that this NWP should authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters. In addition, this NWP should not be restricted to frequently cropped wetlands. Division engineers can regionally condition paragraph (b) or (c) of this NWP to prohibit or limit its use in playas, prairie potholes, and vernal pools. This NWP does not authorize the destruction of streams. The only stream impacts authorized by this NWP are discharges of dredged or fill material into waters of the United States to relocate drainage ditches constructed in non-tidal streams.

One commenter stated that a separate NWP should be developed for the installation of drainage ditches or drainage tile. Another commenter asked if this NWP authorizes silvicultural or ranching activities.

This NWP can be used to authorize discharges of dredged or fill material into non-tidal wetlands to construct drainage ditches or install drainage tile, provided the work meets the terms and conditions of this NWP and does not result in the loss of greater than ½ acre of non-tidal waters of the United States. This NWP authorizes silvicultural and ranching activities, because they are considered agricultural activities.

One commenter opposed the proposed indexed acreage limit for this NWP and several commenters supported the use of an indexed acreage limit. One commenter said that the activities authorized by paragraphs (c) and (d) should be included in the indexed acreage limit for this NWP. Two commenters supported the maximum 2 acre limit. Many commenters said that this NWP should have a ¼ acre limit. Other commenters suggested 1/10, ⅓, and 1 acre limits. One commenter supported the 1 acre limit for discharges of dredged or fill material into playas, prairie potholes, and vernal pools. Other commenters said that the acreage limit for discharges into these types of waters should be lower, and one commenter recommended a ⅓ acre limit. Several commenters stated that this NWP should have a linear foot limit for stream impacts. Some commenters suggested a 250 linear foot limit and another commenter recommended a 500 linear foot limit.

Based upon our review of the comments received in response to the July 21, 1999, **Federal Register** notice, we have established a ½ acre limit for discharges of dredged or fill material into non-tidal wetlands (including playas, prairie potholes, and vernal pools) to increase agricultural production. This acreage limit will ensure that the activities authorized by this NWP result in minimal adverse effects on the aquatic environment. We have withdrawn the indexed acreage limit for discharges of dredged or fill material into playas, prairie potholes, and vernal pools to increase agricultural production. We have added a 300 linear foot limit for the relocation of existing drainage ditches constructed in non-tidal streams.

One commenter supported the use of farm tracts to identify single and complete projects under NWP 40. This commenter also said that using farm tracts to define single and complete projects for this NWP is problematic, especially when a farmer leases land to other farms. This commenter stated that landowners would need to request tract numbers and boundary determinations for certain areas, such as range land, where tract numbers or boundary determinations have not yet been designated. Several commenters indicated that the acreage limit for this NWP should be based on farms, not farm tracts. Some of these commenters said that basing the acreage limit on farm tracts will allow more than one use of this NWP for a single agricultural operation. One commenter remarked that the use farm tracts in this NWP does not satisfy the definition of independent utility because the majority of farm tracts are not economically self-supporting.

We maintain our position that single and complete projects for this NWP should be based on farm tracts, not farms. Utilizing farm tracts will make this NWP easier to implement for the regulated public, NRCS personnel, and Corps personnel. In addition, the use of farm tracts will avoid the difficulties associated with the leasing of farm tracts. Data from the Farm Service Agency shows that there is an average of 1.5 farm tracts per farm nationwide. Therefore, the use of farm tracts to determine single and complete projects will not result in substantial losses of wetlands. Since NRCS supports the use of farm tracts for this NWP and the national average is 1.5 farm tracts per farm, we cannot agree with the comment that the majority of farm tracts are not economically self-supporting.

Many commenters objected to the terms of paragraph (a) of the proposed modification of NWP 40, stating that the Corps, not NRCS, should review these activities and determine if they can be authorized by NWP 40. One commenter opposed paragraph (a), stating that it does not provide the district engineer with the opportunity to exercise discretionary authority. Two commenters said that the Clean Water Act does not allow the Corps to delegate portions of the Section 404 permit program to NRCS. One of these commenters also stated that there should be a Memorandum of Agreement between the Corps and NRCS to track the use of this NWP. Two commenters said that NRCS does not have the authority under the Clean Water Act to evaluate the indirect or cumulative impacts of activities authorized by this NWP. One commenter remarked that the provisions of paragraph (a) will increase the workload of District Conservationists at local NRCS offices. Many commenters objected to paragraph (a) because division engineers cannot impose regional conditions on this provision of NWP 40.

These terms and conditions of NWP 40, in conjunction with the requirements of NRCS, will ensure that the activities authorized by paragraph (a) will result in minimal adverse effects on the aquatic environment, without oversight by the Corps. The provisions of paragraph (a) do not delegate the Section 404 program to NRCS. The reporting requirements of subparagraph (a)(5) will allow district engineers to monitor the use of this NWP and assess cumulative adverse effects. The comments we received from NRCS do not indicate that the workload increase imposed on District Conservationists will be unmanageable. To assist in the effective implementation of paragraph (a), division engineers cannot impose regional conditions on this term of NWP 40.

One commenter supported the requirement for USDA program participants to be in compliance with the minimal effects criteria of NRCS. One commenter said that subparagraph (a)(1) of NWP 40 should include the terms ''categorical minimal effects exemption, minimal effect exemptions, and mitigation exemptions,'' which are more accurate than the proposed language. This commenter recommended that the phrase ''if required'' should be included in subparagraph (a)(5) of the proposed modification of NWP 40 because not all activities will require compensatory mitigation. One commenter said that mitigation requirements should be coordinated between NRCS and the Corps to ensure that the mitigation requirements of the Food Security Act and the Clean Water Act are satisfied.

We have modified the text of subparagraph (a)(1) to make it consistent with the terminology utilized in NRCS regulations. We also concur with the third comment in the previous paragraph, and have revised subparagraph (a)(4) accordingly. For

activities authorized by paragraph (a), the Corps will accept the compensatory mitigation requirements of NRCS.

One commenter suggested that NRCS should determine if proposed activities authorized by paragraph (a) will result in unacceptable impact to 100-year floodplains because NRCS must consider impacts to flood storage and flood flowage when determining whether an activity qualifies for a USDA exemption. This commenter also said that if proposed General Condition 27 is not modified to allow NRCS to determine the impacts to 100-year floodplains, then the text of NWP 40 should be revised to include the prohibitions imposed by this general condition.

Since we have modified the proposed General Condition 27 (now designated as General Condition 26) for fills within 100-year floodplains, we have added paragraph (e) to NWP 40. This paragraph states that the permittee must comply with General Condition 26 if the NWP 40 activity is in a 100-year floodplain identified by FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps. We believe that it is adequate to refer the permittee to General Condition 26, instead of incorporating the provisions of this general condition into the text of NWP 40. The Corps, as available, will identify the limits of headwaters for the purposes of General Condition 26.

One commenter said that the PCN threshold for this NWP should be ⅓ acre and another commenter stated that the PCN threshold should be 1/10 acre. A commenter said that the prospective permittee should not be required to disclose past use of NWP 40 with a NWP 40 PCN for additional discharges of dredged or fill material into waters of the United States on the property. Another commenter said that a mitigation plan should be submitted with all NWP 40 PCNs. One commenter said that the phrase ''if required'' should be included in paragraph (b)(5) because not all activities authorized by NWP 40 will require compensatory mitigation. Another commenter objected to paragraph (b) because it contains no provisions for the Corps to verify wetland determinations.

We have adopted a 1/10 acre PCN threshold for activities authorized by paragraph (b) of this NWP. There is no provision in NWP 40 that requires the permittee to notify the Corps of the past use of NWP 40. Subparagraph (b)(4) of NWP 40 requires the submission of a mitigation plan with the PCN. We do not agree with the fourth comment in the previous paragraph, because we are only requiring the submission of a compensatory mitigation proposal with the PCN. District engineers can determine, on a case-by-case basis, that compensatory mitigation is not necessary to ensure that the authorized activity results in minimal adverse effects on the aquatic environment. Verification of wetland determinations and wetland delineations on agricultural land that will remain in agricultural use is the responsibility of NRCS, not the Corps.

One commenter stated that there should be a separate NWP to authorize discharges of dredged or fill material into waters of the United States for the construction of farm buildings. Several commenters objected to this provision, stating that building pads for farm buildings can be constructed outside of waters of the United States. A commenter remarked that the terms for the construction of farm buildings should be the same as the terms for NWP 29. One commenter said that the use of farm buildings constructed near wetlands and streams will contaminate these waters.

We do not agree that a separate NWP for the construction of farm buildings is necessary. We have reduced the acreage limit from 1 acre to ½ acre to ensure that this NWP authorizes discharges of dredged or fill material for the construction of farm buildings that have minimal adverse effects on the aquatic environment. We disagree with the comment that all farm buildings can be constructed outside of wetlands. Farm buildings serve different purposes and are typically larger than single family residences. Therefore, farm buildings should not be subject to the same terms and conditions as NWP 29. The pollution of streams and other waters from agricultural operations are addressed by other Federal, state, and local programs.

Several commenters stated that this NWP should not authorize the relocation of streams or ditches. One commenter said that there should be a limit on the length of ditch that can be relocated, to ensure that the NWP authorizes only activities with minimal adverse effects. Another commenter indicated that the impacts due to ditch relocations should be included in the 2 acre limit for this NWP.

The relocation of drainage ditches is often necessary to increase agricultural production on the farm tract. We have imposed a 300 linear foot limit for the relocation of existing drainage ditches constructed in non-tidal streams. We do not agree that the relocation of drainage ditches constructed in non-tidal waters of the United States should be included in the ½ acre limit of paragraph (a) or (b) because these relocation activities typically do not result in a net loss of aquatic resource functions and values.

One commenter objected to the proposed NWP, stating that it treats USDA program participants and non-participants differently. Another commenter said that the terms and conditions of NWP 40 should not be established to provide equity between developers and agricultural producers, but instead should be based on activities that are similar in nature that have minimal adverse effects on the aquatic environment. One commenter stated that NWP 40 should be subject to the same terms and conditions as NWP 39.

The terms of paragraphs (a) and (b) do not treat USDA program participants and non-participants differently. These two groups are subject to the same acreage limits and mitigation requirements. The only differences between paragraphs (a) and (b) are the agencies reviewing the proposed work and the reporting requirement for USDA program participants. The terms of NWPs 39 and 40 are established to ensure that these NWPs authorize activities with minimal adverse effects on the aquatic environment. Both NWPs 39 and 40 are subject to the ½ acre limit, but different terms and conditions are necessary because these NWPs authorize different types of activities.

Two commenters expressed concern that NWP 40 will be used by land developers to prepare sites for future development by filling wetlands and keep the land in agricultural production for a few years, and then request authorization under NWP 39 for additional discharges of dredged or fill material into waters of the United States to construct a development. One commenter supported the provision proposed in the July 1, 1998, **Federal Register** notice that allowed the use of this NWP each time it was reissued. Another commenter opposed this NWP, indicating that it can be used repeatedly on a single farm over time. One commenter said that discharges of dredged or fill material into waters of the United States for the construction of compensatory mitigation sites should be calculated in the acreage loss of waters of the United States.

NWP 40 contains provisions that prevent land developers from filling wetlands on agricultural land to increase the amount of non-wetland area on the site for future developments. If NWP 40 was used to authorize discharges of dredged or fill material into non-tidal waters on the farm tract to increase agricultural production and the current landowner wants to use NWP 39 to authorize the construction of

a residential, commercial, or institutional development, the combined acreage loss of waters of the United States authorized by NWPs 39 and 40 cannot exceed ½ acre. NWP 40 cannot be used repeatedly on a single farm tract to exceed the ½ acre limit for a single and complete project. Discharges of dredged or fill material into waters of the United States to construct compensatory mitigation sites should not be calculated in the acreage loss of waters of the United States.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. For NWP 40 activities resulting in discharges of dredged or fill material into waters of the United States within 100-year floodplains, General Condition 26 requires the permittee to notify the district engineer and demonstrate that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. Furthermore, General Condition 26 prohibits any above-grade fill under NWP 40 within regulatory floodways above the headwaters. NWP 40 is reissued with the modifications discussed above.

41. Reshaping Existing Drainage Ditches: In the July 21, 1999, **Federal Register** notice, we proposed to issue an NWP to authorize discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-section of drainage ditches constructed in these waters.

Two commenters opposed the issuance of this NWP if certain channelized streams are considered to be drainage ditches. One commenter said that these activities should be reviewed through the individual permit process. Another commenter stated that this NWP will be abused by landowners who want to reshape the banks of their drainage ditches under the guise of improving water quality.

The maintenance of drainage ditches that were constructed by channelizing streams may be eligible for the Section 404(f) exemption. The purpose of NWP 41 is to provide a general permit that authorizes the reshaping of existing serviceable drainage ditches constructed in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, in a manner that benefits the aquatic environment. This NWP does not authorize reshaping of drainage ditches that increases the area drained by the ditch. We do not agree that this NWP will be abused by landowners, because of the stringent terms of the NWP. Division engineers can revoke this NWP in areas where the reshaping of drainage ditches constructed in non-tidal waters of the United States results in more than minimal adverse effects on the aquatic environment, individually or cumulatively.

Several commenters said that NWP 41 is unnecessary, because these activities are authorized by NWP 3 or are exempt from Section 404 permit requirements. A commenter stated that the discussion of the Section 404(f) exemption for ditch maintenance in the July 21, 1999, **Federal Register** notice is inaccurate because it did not include the recapture provision of Section 404(f)(2). Another commenter indicated that if the intent of NWP 41 is to improve water quality, then these activities should be authorized by NWP 27.

NWP 3 does not authorize the reshaping of drainage ditches constructed in waters of the United States. Maintenance activities explicitly identified in Section 404(f) are exempt from permit requirements, subject to the recapture provisions of Section 404(f)(2). NWP 27 authorizes the restoration, enhancement, and creation of aquatic habitats, not the reshaping of drainage ditches.

One commenter said that this NWP should apply to all man-made ditches, whether or not they are currently serviceable, as long as the cropland draining to the ditch has not been abandoned. A commenter requested criteria that will be used to determine whether a particular ditch is currently serviceable. Another commenter recommended expanding the scope of this NWP to authorize ditch relocation. One commenter said that sidecasting into waters of the United States should not be authorized by this NWP. Another commenter suggested that this NWP should not authorize activities that involve the installation of concrete lining or other hard structures.

This NWP applies only to the reshaping of existing serviceable drainage ditches constructed in waters of the United States. It does not authorize the reconstruction of drainage ditches. We have replaced the word ''existing'' with the word ''currently'' in the first sentence of this NWP. For the purposes of NWP 41, the definition of the term ''currently serviceable'' is the same as the definition provided in NWP 3. This NWP does not authorize ditch relocation, because relocating a drainage ditch is likely to result in draining of areas that were not previously drained. We have modified NPW 41 to allow for the temporary sidecasting of material into waters of the United States. Material may be temporarily sidecast (up to three months) into waters of the United States, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate. This NWP does not authorize discharges of dredged or fill material into waters of the United States to line drainage ditches with concrete or other hard structures.

Several commenters said that the scope of waters for this NWP should be expanded to include tidally influenced drainage ditches. One commenter stated that the text of this NWP is misleading because the Corps has no legal authority to regulate the reshaping of drainage ditches landward of the ordinary high water mark if there is no wetland hydrology. Another commenter recommended adding a provision to NWP 41 which states that the maintenance of existing drainage ditches to their original dimensions and configuration is exempt from Section 404 permit requirements.

We do not agree that this NWP should be expanded to authorize discharges of dredged or fill material into tidal waters of the United States or non-tidal wetlands adjacent to tidal waters. The text of NWP 41 clearly states that it authorizes discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters. If the ditch reshaping activity does not involve discharges of dredged or fill material into waters of the United States, including wetlands, then the project proponent does not need a Section 404 permit. The text of this NWP includes a reference to the Corps regulations that address the Section 404(f) exemptions.

One commenter believes that the water quality benefits of the activities authorized by this NWP are doubtful and that the use of this NWP will increase the drainage of wetlands. Another commenter stated that the activities authorized by this NWP will prevent the development of woody vegetated buffers, which contradicts the goal of no net loss of wetlands and discourage stream restoration. Three commenters said that reshaping a drainage ditch will increase its

hydraulic capacity. One of these commenters indicated that the project proponent should be required to demonstrate that the proposed work will not increase the area drained by the ditch. Two commenters indicated that compensatory mitigation should be required for the activities authorized by this NWP because drainage ditches drain wetlands.

Drainage ditches can be reshaped to improve water quality, without increasing the area drained by those ditches. This NWP does not authorize ditch reshaping activities that expand the area drained by the ditch. The removal of woody vegetation next to the stream is often necessary to maintain or reshape the drainage ditch. We do not agree that it is necessary to require project proponents to provide documentation that demonstrates that the activity will not increase the area drained by the ditch because the work is limited to restoring the ditch to its original capacity. Compensatory mitigation should not be required for activities authorized by this NWP, because it does not authorize the drainage of additional wetlands.

Three commenters recommended a 500 linear foot limit on this NWP and one commenter suggested a 250 linear foot limit. One commenter said that there should not be a limit on this NWP if the activity does not involve sidecasting into waters of the United States. One commenter stated that the PCN threshold should be reduced to 250 linear feet. Two commenters indicated that a delineation of special aquatic sites should not be required for those activities that require notification.

We do not agree that a linear foot limit should be placed on this NWP, because it authorizes activities that typically benefit the aquatic environment. We are retaining NWP 41 on the list of NWPs that require the submission of a delineation of special aquatic sites with the PCN.

One commenter said that NWP 41 should be conditioned to require permittees to obtain certification for best management practices from NRCS. Another commenter stated that this NWP should include a condition prohibiting the construction of berms and levees that would impede overbank flow. One commenter said that this NWP should authorize the reconfiguration of improperly designed drainage ditches, with the submission of a notification that documents the need for reconfiguration, to minimize adverse effects due to headcutting and increases in sediment loads.

We do not agree that it is necessary to require permittees to obtain certification for best management practices from NRCS. General Condition 21 states that NWP activities cannot permanently restrict or impede the passage of normal or expected high flows. Temporarily sidecast material should be placed so that it does not impede overbank flows. No berms, levees, or other similar structures are authorized by NWP 41. The reconfiguration of improperly designed drainage ditches can be authorized by individual permits, regional general permits, or other NWPs.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. NWP 41 is issued with the modifications discussed above.

42. Recreational Facilities: In the July 21, 1999, **Federal Register** notice, we proposed to issue an NWP to authorize discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of recreational facilities that are integrated into the existing landscape.

One commenter said that this NWP will authorize activities with more than minimal adverse effects on the aquatic environment and induce development of neighboring areas. One commenter stated that the word ''passive'' should be retained in the title of the NWP. One commenter noted that the word ''of'' should be replaced with the word ''or'' after the word ''construction'' in the first sentence. Two commenters said that this NWP should authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

The terms and conditions of this NWP, as well as the ability of division and district engineers to place regional and case-specific conditions on this NWP, will ensure that this NWP authorizes only activities with minimal adverse effects on the aquatic environment. We will not restore the word ''passive'' to the title of this NWP because it is an ambiguous term that does not provide any value to the NWP. We have replaced the word ''of'' with the word ''or'' in the first sentence of the NWP. The scope of applicable waters for this NWP is limited to ''non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters'' to ensure that this NWP authorizes only activities with minimal adverse effects on the aquatic environment.

Many commenters objected to including the construction and expansion of golf courses and the expansion of ski areas in the list of activities authorized by this NWP. One commenter stated that the improvement of ski areas should be authorized by this NWP, in addition to the expansion of these facilities. One commenter said that other types of recreational facilities should be authorized by this NWP if they do not result in substantial amounts of grading and filling and the adverse effects on the aquatic environment are minimal. This commenter indicated that ball fields should be authorized by this NWP. Another commenter said that impervious surfaces should be authorized in areas where they are required for stabilization or meeting access requirements for disabled persons. One commenter stated that the term ''substantial'' needs to be defined so that it is consistently implemented by district engineers.

As discussed in the July 21, 1999, **Federal Register** notice, NWP 42 authorizes the construction and expansion of golf courses and the expansion of ski areas that are integrated into the natural landscape. These types of recreational facilities can be constructed without substantial amounts of grading and filling. NWP 42 does not authorize the construction of new ski areas, but this NWP may authorize discharges of dredged or fill material into waters of the United States to improve existing ski areas, provided the activity meets the terms and conditions of this NWP.

This NWP does not authorize the construction or expansion of playing fields because these activities typically require substantial grading and filling to create level playing surfaces, as well as the installation of drainage systems. The construction or expansion of basketball courts, tennis courts, racetracks, stadiums, and areas involve the construction of substantial amounts of impervious surfaces and therefore are not authorized by this NWP. Recreational facilities not authorized by this NWP may be authorized by other NWPs, regional general permits, or individual permits.

This NWP does not authorize discharges of dredged or fill material into waters of the United States to stabilize areas within the recreational facility. NWP 13 may authorize bank stabilization activities associated with the recreational facility. Small amounts of impervious surface may be constructed in recreational facilities

authorized by this NWP to satisfy access requirements for disabled persons. District engineers will determine on a case-by-case basis whether the construction or expansion of a proposed recreational facility will result in substantial changes in preconstruction grades.

Two commenters supported the proposed 1 acre limit. Several commenters stated that the proposed acreage limit is too large. One commenter said that the acreage limit should be ½ acre and two commenters suggested a ⅓ acre limit. A commenter recommended a 100 linear foot limit for stream bed impacts and two commenters suggested a 250 linear foot limit for stream bed impacts.

To ensure that this NWP authorizes activities with minimal adverse effects on the aquatic environment, we have reduced the acreage limit to ½ acre and added a 300 linear foot limit for filling or excavating perennial or intermittent stream beds.

Two commenters said that this NWP should have the same PCN thresholds as NWP 39. Two commenters recommended a PCN threshold of ⅓ acre. One commenter supported the 500 linear foot PCN threshold for perennial and intermittent stream bed impacts. Three commenters stated that the PCN threshold for stream bed impacts should be reduced to 250 linear feet.

We have reduced the PCN threshold to 1/10 acre. Since we have added a 300 linear foot limit for stream bed impacts, we have deleted the 500 linear foot PCN threshold for perennial and intermittent stream bed impacts.

One commenter said that the phrases ''has low impact on the aquatic environment'' and ''consists primarily of open space that'' should be deleted from NWP 42 because they are confusing and will cause inconsistent implementation of this NWP. Several commenters indicated that a compensatory mitigation proposal to offset losses of waters of the United States should be required for all activities that require notification.

We have deleted these phrases from the text of NWP 42. We do not agree that it is necessary to require a compensatory mitigation proposal with the PCN, because of the types of recreational facilities authorized by this NWP.

Several commenters said that this NWP should not authorize discharges of dredged or fill material into wetlands for the construction of stables and sanitary facilities. One commenter stated that support facilities should be authorized by NWP 39. Another commenter remarked that support facilities should be constructed in uplands. One commenter said that restaurants and hotels should be authorized by this NWP because these facilities support the recreational facility. One commenter requested a definition of the term ''small support facilities.'' A commenter stated that the phrase ''reduced fertilizer use'' should be replaced with the term ''appropriate fertilizer use'' in the last paragraph of this NWP.

We maintain our position that this NWP should authorize small support facilities necessary for the operation of the recreational facility. Permittees are required to comply with General Condition 19, which states that the project proponent must avoid and minimize activities in waters of the United States on-site to the maximum extent practicable. We maintain our position that restaurants and hotels should not be authorized by this NWP. Restaurants and hotels can be authorized by other NWPs, such as NWP 39, regional general permits, or individual permits. District engineers will determine, for those activities that require notification, what constitutes a ''small'' support facility that is authorized by this NWP. We believe that the term ''reduced fertilizer use'' is more appropriate because the intent is to encourage permittees to utilize less fertilizer, which will reduce fertilizer loads on neighboring waterbodies.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. For NWP 42 activities resulting in discharges of dredged or fill material into waters of the United States within 100-year floodplains, General Condition 26 requires the permittee to notify the district engineer and demonstrate that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. NWP 42 is issued with the modifications discussed above.

43. Stormwater Management Facilities: In the July 21, 1999, **Federal Register** notice, we proposed to issue an NWP to authorize discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction and maintenance of stormwater management (SWM) facilities.

Several commenters supported the issuance of this NWP and one commenter agreed that the construction of SWM facilities in wetlands is often necessary and that these SWM facilities are often more effective than SWM facilities constructed in uplands. Several commenters objected to the issuance of an NWP that authorizes the construction of SWM facilities in wetlands and other commenters opposed the issuance of a separate NWP for SWM facilities. One commenter said that this NWP should authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

We maintain the position discussed in the July 21, 1999, **Federal Register** notice that the construction of SWM facilities in waters of the United States is often necessary and may provide more protection to the aquatic environment. SWM facilities located in waters of the United States are often more effective than SWM facilities constructed in uplands, because storm runoff flows to streams and wetlands, making these areas more effective at trapping sediments and pollutants than upland areas. The local aquatic environment benefits from more efficient SWM facilities. Low value wetlands and low value ephemeral and intermittent streams may be the best places to locate SWM facilities, to reduce adverse effects to higher value waters by attenuating storm flows and preventing pollutants from further degrading those areas. Division engineers can regionally condition this NWP to prohibit its use in high value waters. For those activities that require notification, district engineers can add case-specific conditions to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority and require an individual permit for activities with more than minimal adverse effects. We do not agree that the scope of applicable waters for this NWP should be expanded to non-tidal wetlands adjacent to tidal waters, because this restriction is necessary to ensure that NWP 43 authorizes activities with minimal adverse effects on the aquatic environment.

Two commenters asked whether NWP 43 authorizes the construction of dams and detention basins to build new SWM facilities. Several commenters said that this NWP does not clearly identify the extent of the Corps regulatory jurisdiction concerning stormwater retention and detention facilities. One of these commenters stated that SWM

facilities constructed in uplands that contain wetland vegetation should not be considered jurisdictional wetlands. One commenter said that 40 CFR 131.10 prohibits states from designating waste transport or waste assimilation uses for any water of the United States. This commenter indicated that NWP 43 is contrary to this regulation because it authorizes the construction of SWM facilities in waters of the United States.

This NWP authorizes the construction of dams and detention basins for SWM facilities. However, this NWP does not authorize discharges of dredged or fill material into perennial streams for the construction of new SWM facilities. SWM facilities that were constructed in uplands and have not been abandoned are generally not considered waters of the United States, but district engineers reserve the right to determine on a case-by-case basis whether these areas are waters of the United States (see 51 FR 41217). The provisions of 40 CFR 131.10 do not prohibit discharges of dredged or fill material into waters of the United States for the construction or maintenance of SWM facilities. Stormwater is not categorized as waste.

One commenter supported the proposed 2 acre limit and several commenters recommended increasing the acreage limit to 3 acres for SWM facilities constructed by local governments or local flood control agencies. One commenter said that the 2 acre limit is too low but another commenter indicated that this acreage limit is too high. One commenter suggested a 1 acre limit for NWP 43 and another commenter recommended a ¼ acre limit. One commenter said that this NWP should have a 100 linear foot limit for stream bed impacts.

We have reduce the acreage limit for this NWP to ½ acre, to ensure that NWP 43 authorizes activities with minimal adverse effects on the aquatic environment. In addition, we have added a 300 linear foot limit for filling or excavating perennial or intermittent stream beds.

One commenter supported paragraph (b) of the proposed NWP (now designated as paragraph (c)), which states that NWP 43 does not authorize discharges of dredged or fill material into perennial streams for the construction of new SWM facilities. One commenter said that this NWP should not authorize discharges of dredged or fill material into any stream with perennial stream segments, because some arid regions of the country have perennial streams that occasionally become dry along certain reaches. Two commenters stated that this NWP should not authorize any discharges of dredged or fill material into streams to construct SWM facilities. One of these commenters expressed concern that the NWP would authorize activities with more than minimal cumulative adverse effects in urban areas and said that the conversion of streams to SWM ponds results in the creation of pollution sinks for urban storm runoff. One commenter said that this NWP should contain a condition that requires the maintenance of stream base flows.

We have retained this paragraph in NWP 43. In arid regions of the country, division engineers can regionally condition this NWP to prohibit or restrict its use in streams with intermittent or ephemeral stream segments, if those streams are high value waters. We do not agree that the prohibition in paragraph (c) should be extended to intermittent or ephemeral streams because we believe that, under the terms and conditions of this NWP, the construction of SWM facilities in these waters will result in minimal adverse effects on the aquatic environment. District engineers will monitor the use of this NWP to ensure that it does not authorize activities with more than minimal adverse effects on the aquatic environment, individually and cumulatively. Compliance with General Condition 21 will ensure that surface water flows will be maintained to the maximum extent practicable.

Two commenters objected to the proposed NWP because it does not contain limits for ephemeral stream impacts. These commenters suggested that this NWP should contain language stating that notification to the district engineer is not required for the construction or maintenance of SWM facilities constructed in ephemeral streams. These commenters also recommended that the text of this NWP explicitly state that SWM facilities that were originally constructed in ephemeral streams that have become perennial or intermittent streams are exempt from any permit requirements.

The ½ acre limit for this NWP adequately limits impacts to ephemeral streams. Division engineers can regionally condition this NWP to impose limits on discharges of dredged or fill material resulting in the loss of ephemeral stream bed, if there are specific concerns for the aquatic environment in those regions. Any discharges of dredged or fill material into waters of the United States associated with SWM facilities constructed in ephemeral streams that are considered waters of the United States requires a Corps permit.

Two commenters said that the ¼ acre PCN threshold is too small and two other commenters suggested a ⅓ acre PCN threshold. One commenter stated that the PCN threshold should be lower.

We have lowered the PCN threshold for this NWP to 1/10 acre, to ensure that district engineers have the opportunity to review all activities that have the potential to result in more than minimal adverse effects on the aquatic environment. We have removed the PCN threshold for activities causing the loss of greater than 500 linear feet of intermittent stream bed, since we have added a 300 linear foot limit for stream bed impacts.

One commenter asked if the PCN threshold applies to wetlands that were created as a result of the impoundment of stormwater. This commenter expressed concern that permittees would be required to mitigate for impacts to wetlands created by the construction of an SWM facility. This commenter said that these wetlands are often removed during routine maintenance activities and that requiring compensatory mitigation for the losses of these created wetlands would adversely affect the ability of permittees to effectively restore SWM facilities to their original design capacities.

Notification to the district engineer is required for discharges of dredged or fill material that result in the loss of greater than 1/10 acre of waters of the United States. District engineers will determine the appropriate amount of compensatory mitigation necessary to offset losses of waters of the United States to ensure that the adverse effects on the aquatic environment are minimal. Subparagraph (d)(3) clearly states that compensatory mitigation is not required for maintenance activities in designated maintenance areas of existing SWM facilities.

One commenter recommended the removal of subparagraph (c)(1) of the proposed NWP (now designated as subparagraph (d)(1)) because the maintenance of SWM facilities occurs on an unpredictable, episodic basis which is not conducive to a maintenance plan. Another commenter said that a compensatory mitigation proposal should not be required for all activities that require notification because the construction of some SWM facilities may result in the establishment of diverse, mature wetlands in areas that are not disturbed for extended amounts of time. This commenter suggested that the district engineer should have the ability to determine whether or not compensatory mitigation should be required for maintenance activities authorized by this NWP.

Subparagraph (d)(1) does not require maintenance on a timed schedule. The maintenance plan can include a statement that maintenance activities will be conducted as needed, to ensure that the SWM facility continues to function effectively. The maintenance plan should also identify the designated maintenance areas of the SWM facility. Subparagraph (d)(3) requires only the submission of a compensatory mitigation proposal with the PCN. Based on the review of a PCN, a district engineer can determine that compensatory mitigation is unnecessary because the adverse effects on the aquatic environment are minimal without compensatory mitigation or that they will be mitigated as wetlands are established in the SWM facility.

Two commenters said that the reference to ''watershed protection techniques'' should be deleted from paragraph (e) of the proposed NWP (now designated as paragraph (f)) or the term should be defined for the purposes of NWP 43. One commenter stated that the maintenance of existing SWM facilities should be exempted from the requirements of this paragraph. One commenter said that it is inappropriate for the Corps to characterize bioengineering methods as best management practices. This commenter indicated that bioengineering methods should be considered as mitigation and that the permittee should be given compensatory mitigation credits for utilizing bioengineering methods. One commenter indicated that there is a contradiction in the July 21, 1999, **Federal Register** notice because this notice states the district engineer can allow the establishment of mitigation credits in SWM facilities constructed with bioengineering techniques, but mitigation credits cannot be established in regularly maintained areas in SWM facilities. This commenter said that that mitigation credits should be limited to non-maintenance areas and that mitigation credits should not be allowed for the establishment of aquatic benches.

We have retained the phrase ''watershed protection techniques'' in paragraph (f) because these techniques are an important mechanism to ensure that NWP 43 authorizes activities with minimal adverse effects on the aquatic environment. We will not define this term because appropriate watershed protection techniques may vary in different areas of the country. For example, in many arid regions of the country it may be impractical to establish and maintain vegetated buffers next to streams. In general, the requirements of paragraph (f) apply to the construction of new SWM facilities, but best management practices should be used when conducting maintenance activities. Bioengineering techniques can be used to mitigate adverse effects on surface water quality. These techniques should be considered as best management practices in accordance with the definition in the ''Definitions'' section of the NWPs. District engineers can grant compensatory mitigation credits for bioengineering methods if those methods result in net gains in aquatic resource functions and values and are not located in areas within SWM facilities that require regular maintenance. Aquatic benches can provide compensatory mitigation, if those areas are not in designated maintenance areas of SWM facilities.

One commenter said the NWP 43 will authorize the construction of more than one stormwater management facility in a single watershed. This commenter stated that paragraph (e) of the proposed NWP (now designated as paragraph (f)) should contain a provision that requires the consideration of other SWM facilities located in the same watershed.

NWP 43 can be used to authorize more than one SWM facility in a particular watershed, provided each of those SWM facilities constitutes a separate single and complete project with independent utility. District engineers will monitor the use of this NWP to ensure that it does not authorize activities with more than minimal adverse effects on the aquatic environment, individually or cumulatively.

Several commenters said that maintenance of SWM facilities should be considered exempt from Corps permit requirements. One commenter stated that the requirements of paragraph (f) of the proposed NWP (now designated as paragraph (g)) are unnecessary because this activity can be authorized by NWP 3.

The maintenance of SWM facilities constructed in Section 404 waters is not exempt from Corps permit requirements. However, most maintenance does not require a Corps permit because the activity only involves incidental fallback of dredged material. NWP 43 authorizes the maintenance of existing SWM facilities that involves discharges of dredged or fill material into waters of the United States. NWP 43 does not authorize maintenance activities in Section 10 waters.

One commenter expressed concern about the provision in paragraph (g) of the proposed NWP (now designated as paragraph (h)). This commenter said that a developer could fill up to 3 acres of waters of the United States under NWP 39 and the local government could build an SWM facility for the development under NWP 43, which would exceed the total acreage for a single and complete project.

We believe that most SWM facilities constructed for a particular development will be built by the developer, not the local government. The developer may turn over the SWM facility to the local government for maintenance, but the construction of the SWM facility will be reviewed with the construction of the development. If NWP 39s and 43 are combined to authorize a single and complete project, the activity is subject to General Condition 15. There may be instances where a local government will construct a regional SWM facility that serves more than one development. These regional SWM facilities are considered to have independent utility from the serviced developments and may be authorized by NWP 43.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. For NWP 43 activities resulting in discharges of dredged or fill material into waters of the United States within 100-year floodplains, General Condition 26 requires the permittee to notify the district engineer and demonstrate that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. NWP 43 is issued with the modifications discussed above.

44. Mining Activities: In the July 21, 1999, **Federal Register** notice, we proposed to issue an NWP to authorize discharges of dredged or fill material into certain types of non-tidal waters of the United States for aggregate and hard rock/mineral mining activities.

A large number of commenters opposed the issuance of NWP 44. Numerous commenters said that NWP 44 is so restrictive that it will be of little use to the mining industry. These commenters also indicated that mining companies will have little incentive to design their projects to meet the terms and conditions of NWP 44 and that these companies will apply for individual permits. Many commenters

stated that the activities authorized by NWP 44 will result in more than minimal cumulative adverse effects on the aquatic environment, individually and cumulatively. Several commenters said that the Corps should issue separate NWPs for aggregate and hard rock/mineral mining activities. One of these commenters stated that aggregate and hard rock/mineral mining activities are distinct forms of mining and that issuing one NWP to authorize both of these activities violates the similar in nature requirement of Section 404(e) of the Clean Water Act.

The terms and conditions of this NWP will ensure that it authorizes only aggregate and hard rock/mineral mining activities with minimal adverse effects on the aquatic environment. Where there are specific concerns for the aquatic environment, division engineers can regionally condition this NWP to prohibit or limit its use in high value waters. Since notification to the district engineer is required for all activities authorized by this NWP, each proposed mining activity will be reviewed by district engineers to ensure that the work results in minimal adverse effects. We maintain our position that it is unnecessary to issue separate NWPs for aggregate and hard rock/mineral mining activities. These activities are sufficiently similar in nature to warrant the issuance of a single NWP.

One commenter asked what is meant by the term ''hard rock/mineral mining'' as used in the context of NWP 44. This commenter indicated that the district engineer will determine what constitutes mining for the purposes of this NWP on a case-by-case basis. This commenter also requested clarification whether NWP 44 authorizes all discharges of dredged or fill material into waters of the United States for hard rock/mineral mining activities or whether the Corps intends to limit this NWP to a certain subset of mining and related activities. One commenter asked for a definition of the term ''support activities'' as used in the context of this NWP. Another commenter said that this NWP should be expanded to authorize the mining of clay and dirt.

For purposes of this NWP, hard rock/mineral mining is the extraction of metalliferous ores from subsurface locations. NWP 44 authorizes discharges of dredged or fill material into certain categories of waters of the United States, as identified in the first paragraph of this NWP, for aggregate mining activities and hard rock/mineral mining activities. District engineers will determine, on a case-by-case basis, whether a particular mining activity is within the scope of this NWP. NWP 44 also authorizes fill for support facilities necessary for the mining operation. Support facilities authorized by this NWP include berms, access and haul roads, rail lines, dikes, road crossings, settling ponds and settling basins, ditches, stormwater and surface water management facilities, head cut prevention activities, sediment and erosion controls, and mechanized landclearing. In the July 21, 1999, **Federal Register** notice, we discussed the applicability of this NWP to clay mining activities and the extraction of soil to be used as fill material. NWP 44 does not authorize clay mining or the extraction of fill dirt from waters of the United States. These activities can be authorized by other NWPs, regional general permits, or individual permits.

Several commenters objected to the scope of applicable waters for this NWP, stating that it is too limited for most mining activities A number of commenters stated that hard rock/mineral mining activities should be authorized in ephemeral streams. One commenter said that NWP 44 should authorize mining activities in headwaters, including intermittent and perennial streams. Several commenters stated that there is no need to limit the use of this NWP to the upper portion of headwaters and eliminate the ability for miners to relocate or divert most headwater stream segments. Many commenters indicated that this NWP should not authorize any activities in streams. One commenter asked why NWP 44 does not authorize mining activities between lower perennial streams and the upper segments of headwater streams. One commenter said that the 1 cubic foot per second threshold should be replaced with ephemeral streams as a limit for stream bed impacts for aggregate mining activities. Several commenters said that the Cowardin definition of the term ''lower perennial stream'' should be included in the ''Definitions'' section of the NWPs.

The scope of applicable waters for NWP 44 is intended to ensure that this NWP authorizes only those mining activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. We do not agree that hard rock/mineral mining activities should be authorized in streams because these activities are more likely to result in more than minimal adverse effects on the aquatic environment, due to the processing methods used for this type of mining. NWP 44 authorizes aggregate mining activities in perennial and intermittent streams, provided those streams have an average annual flow of 1 cubic foot per second (cfs) or less. NWP 44 also authorizes aggregate mining activities in lower perennial streams. Limiting aggregate mining activities to these small streams will ensure that the NWP authorizes activities with minimal adverse effects on the aquatic environment. Streams segments located between lower perennial streams and the upper reaches of headwater streams often provide valuable aquatic habitat, such as fish spawning areas. We do not agree that the 1 cfs threshold should be replaced with ephemeral streams for aggregate mining activities in headwaters. In the last paragraph of this NWP, we have incorporated a modified version of the Cowardin definition of the term ''lower perennial riverine subsystem'' to clarify where aggregate mining activities in lower perennial streams are authorized. We have also replaced the word ''and'' with the term ''and/or'' between parts (ii) and (iii) of the introductory paragraph to clarify that a particular mining activity authorized by NWP 44 can occur in any or all of the specified waters.

Several commenters stated that the proposed 2 acre limit for NWP 44 is too low. Numerous commenters suggested that this NWP should have a higher, indexed acreage limit. Three commenters recommended a 3 acre limit and another commenter said that impacts to lower perennial streams, isolated wetlands, and ephemeral streams should be limited to 1 acre. One commenter stated that this NWP should have a higher acreage limit because other Federal and state programs that address hard rock/mineral mining activities require measures to minimize impacts to waters of the United States. One commenter suggested that the Corps impose a linear limit on perennial and intermittent stream bed impacts. Another commenter recommended a 500 linear foot limit for stream bed impacts.

To ensure that this NWP authorizes activities with minimal adverse effects on the aquatic environment, we have reduced the acreage limit of NWP 44 to ½ acre. We do not agree that this NWP should have an indexed acreage limit. Since this NWP has applicability nationwide, it would be impractical to utilize state requirements for mining activities, because their requirements are likely to vary considerably between geographic areas. This NWP is limited to small stream segments; therefore it is unnecessary to impose a linear limit on stream bed impacts. However, division engineers can regionally condition this NWP to further limit stream impacts. In addition, notification is required for all activities authorized by this NWP,

which will allow district engineers to review proposed stream impacts on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment.

Two commenters objected to requiring PCNs for all activities authorized by this NWP. One commenter suggested a ⅓ acre PCN threshold. Several commenters stated that the Corps does not have the authority to review reclamation plans and the requirement to submit reclamation plans with the PCN should be removed.

We believe that it is necessary to require notification for all activities authorized by this NWP, to ensure that the NWP authorizes activities with minimal individual and cumulative adverse effects on the aquatic environment. As discussed in the July 21, 1999, **Federal Register** notice, the requirement for submission of a reclamation plan with the PCN is not intended to supersede other Federal or State requirements. The district engineer will not require reclamation *per se,* but will review the reclamation plan to determine if compensatory mitigation is required to offset losses of waters of the United States and ensure that the individual or cumulative adverse effects of the mining activity on the aquatic environment are minimal. If there are no Federal or State requirements for a reclamation plan for a particular mining activity, the applicant should state that fact in the PCN. The District Engineer may require compensatory mitigation for that activity to ensure that the adverse effects on the aquatic environment are minimal. If the reclamation plan required by Federal or state law adequately addresses compensation for losses of waters of the United States, then the District Engineer will not require additional compensatory mitigation, unless there are additional concerns for the aquatic environment.

Several commenters asked whether paragraph (i) of the proposed NWP (now designated as paragraph (h)) applies only to hard rock/mineral mining activities because of the processes involved in mineral extraction. Some of these commenters indicated that the text of this paragraph implies that the 200 foot setback applies to both aggregate and hard rock/mineral mining activities. A number of commenters said that the Corps does not have the authority to prohibit beneficiation and mineral processing within 200 feet of the ordinary high water mark (OHWM) of open waters. One commenter asked if the 200 foot setback is necessary because NWP 44 does not authorize discharges of dredged or fill material into open waters of the United States for hard rock/mineral mining activities.

The requirements of paragraph (h) of the proposed NWP 44, apply only to hard rock/mineral mining activities. We have inserted the phrase ''for hard rock/mineral mining activities'' into the text of paragraph (h) to clarify that the 200 foot setback applies only to beneficiation and mineral processing associated with hard rock/mineral mining activities. In the mining industry, the term ''beneficiation'' applies solely to mineral ore processing. We have the authority to condition NWP 44 to prohibit beneficiation and mineral processing within 200 feet of the OHWM of open waters because this requirement is necessary to ensure that the NWP authorizes activities with minimal adverse effects on the aquatic environment. Project proponents conducting hard rock/mineral mining activities in waters of the United States who want to conduct beneficiation and mineral processing within 200 feet of the OHWM of open waters can request another form of DA permit for those activities. The 200 foot setback required for beneficiation and mineral processing activities is necessary to protect water quality.

We have also modified paragraph (i) (paragraph (j) of the proposed NWP) to clarify that the district engineer can require modifications to the water quality management plan for the mining activity to ensure that adverse effects to water quality are minimal. In addition, we have modified paragraph (k) (formerly paragraph (l)) to clarify what constitutes a single and complete mining activity. In paragraph (l) (formerly paragraph (m)), we have changed the first item to require the notification to include a description of waters of the United States adversely affected by the proposed work.

Several commenters objected to the provision in the last paragraph of NWP 44 that prohibits hard rock/mineral mining within 100 feet of the OHWM of headwater streams. Another commenter said that this NWP should contain depth limits for pits because large pits could be constructed under this NWP. One commenter suggested adding a provision to NWP 44 that requires the permittee to fully reclaim or restore the mined site before commencing mining activities on another site in the same stream segment.

The prohibition against hard rock/mineral mining activities in waters of the United States within 100 feet of the OHWM of headwater streams is necessary to ensure that these mining activities result in minimal adverse effects on headwater streams. It is unnecessary to add a depth limit for mining pits because the ½ acre limit and the terms and conditions of NWP 44 provide adequate protection of the aquatic environment. We do not agree that it is necessary to require permittees to fully reclaim or restore the mined site before conducting mining activities on other sites because the NWP regulations concerning single and complete projects already adequately address multiple mining activities.

Several commenters requested further explanation of the proposed ''clarification of jurisdiction'' for mining operations that was provided in the preamble of the July 21, 1999, **Federal Register** notice. These commenters asked for definitions of the terms ''cessation of operations'' and ''abandonment.'' Two commenters said that the ''clarification of jurisdiction'' must clearly state that wetlands, ponds, and other waterbodies will not be considered ''waters of the United States'' until bond release. One commenter objected to changing the 15 year term proposed in the preamble to the July 1, 1998, **Federal Register** notice to a 5 year term because mining is a cyclical industry and shutdowns of greater than 5 years are not uncommon.

One commenter stated that the ''clarification of jurisdiction'' statement is inconsistent with the effluent limitation guidelines at 40 CFR part 440. This commenter said that pit lakes should be regulated as waters of the United States, even though the mining site has not been reclaimed. This commenter expressed concern that pit lakes would not be considered waters of the United States even if the mining operation ceased years ago. In addition, this commenter indicated that the construction of pit lakes would does not comply with former paragraph (f) (now designated as paragraph (e)) of the proposed NWP and General Condition 21.

As a result of our review of the comments addressing the proposed ''clarification of jurisdiction'' we have decided to withdraw the proposed guidance. District engineers will determine, on a case-by-case basis, whether a specific mined area has been abandoned. In most cases, a mining site where no construction, mining, excavation, processing, and/or reclamation activities have occurred during the last 10 years would be considered abandoned, at the district engineer's discretion. Wetlands and waterbodies within an abandoned mined area would be considered ''waters of the United States'' if those

areas meet the criteria at 33 CFR part 328.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP is subject to General Condition 25, which restricts its use in designated critical resource waters. For NWP 44 activities resulting in discharges of dredged or fill material into waters of the United States within 100-year floodplains, General Condition 26 requires the permittee to notify the district engineer and demonstrate that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. NWP 44 is issued with the modifications discussed above.

IV. Comments and Responses on Nationwide Permit General Conditions

In the July 21, 1999, **Federal Register** notice, the Corps announced its decision to combine the NWP General Conditions with the Section 404 Only conditions. Two commenters supported this change. In the July 21, 1999, **Federal Register** notice, the Corps proposed to modify nine NWP general conditions and add three new NWP conditions. In response to that **Federal Register** notice, we received many comments on specific NWP general conditions.

The general conditions in this **Federal Register** notice will apply to all of the NWPs, including the NWPs published in the December 13, 1996, **Federal Register** notice, unless a particular general condition applies only to specific NWPs listed in that general condition. The general conditions published today will become effective on June 5, 2000.

4. Aquatic Life Movements: In the July 21, 1999, **Federal Register** notice, we proposed to modify this general condition by adding a requirement for culverts to be installed to maintain low flow conditions.

One commenter stated that there are situations, such as stream channels with bedrock substrate, where culverts cannot be installed below grade to maintain low flows. This commenter requested that the Corps remove the requirement to install culverts to maintain low flows. Another commenter asked the Corps to remove the word ''substantially'' from this general condition because it imposes a threshold that is too high for activities that result in minimal adverse effects on the aquatic environment.

We do not agree that it is necessary to add an exclusion for stream beds that consist solely of bedrock. Road crossings in these streams can be constructed through other means, such as bridges or fords, that allow low flows to pass through the crossing. It is important to maintain low flow conditions to minimize disruptions to movements of aquatic organisms.

We have retained the word ''substantially'' in the text of this general condition because the removal of this word would change the requirement from ''minimal adverse effect'' to ''no adverse effect.'' We recognize that most work in waters of the United States will result in some disruption in the movement of aquatic organisms through those waters. District engineers will determine, for those activities that require notification, if the disruption of aquatic life movements is more than minimal and either add conditions to the NWP to ensure that the adverse effects are minimal or exercise discretionary authority and require an individual permit. This general condition is adopted as proposed.

7. Wild and Scenic Rivers: In the July 21, 1999, **Federal Register** notice, we did not propose any changes to this general condition. One commenter objected to the inclusion of ''study rivers'' in the text of this general condition.

We will retain ''study rivers'' in this general condition because study rivers are afforded the same protections as designated Wild and Scenic Rivers, while they are in study status. This general condition is retained without change.

9. Water Quality: The draft modification of General Condition 9 that was published in the July 21, 1999, **Federal Register** notice required permittees to develop and implement water quality management plans for activities authorized by NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, if such a plan is not required by the state or Tribal Section 401 water quality certification. The draft modification of this general condition also required the establishment and maintenance of vegetated buffers next to open waters, such as streams.

To clarify the requirements of General Condition 9, we have divided this general condition into two paragraphs. Paragraph (a) discusses the requirement for individual water quality certifications. Paragraph (b) addresses the requirement for water quality management plans, including vegetated buffers.

Many commenters objected to the requirement for a water quality management plan, stating that the Corps lacks the statutory authority to require such a plan. A large number of commenters said that this requirement is duplicative of existing programs, such as state or Tribal water quality certification (WQC) and National Pollutant Discharge Elimination System programs. Several commenters stated that the Corps does not have the authority to determine whether a particular state or Tribal program adequately addresses water quality. Two commenters remarked that the Corps cannot override a state's WQC decision. Several commenters said that the proposed modification of General Condition 9 is not consistent with 33 CFR 320.4(d), which states that: ''[c]ertification of compliance with applicable effluent limitations and water quality standards required under provisions of section 401 of the Clean Water Act will be considered conclusive with respect to water quality considerations unless the Regional Administrator, Environmental Protection Agency (EPA), advises of other water quality aspects to be taken into consideration.'' A number of commenters said that the Corps does not have the expertise to assess the effectiveness of water quality management plans or stormwater management plans for particular activities. One commenter asked for a definition of the term ''water quality management plan.''

Two commenters objected to the proposed modification of General Condition 9 because it requires stormwater management plans, even if those plans are not required by state or local governments. One commenter supported the statement in the July 21, 1999, **Federal Register** notice that a water quality management plan is not required if water quality issues are adequately addressed by state or local governments. One commenter objected to a statement in the July 21, 1999, **Federal Register** notice that a water quality management plan is not required for activities that have minimal adverse effects on local water quality. This commenter said that this statement is illogical because the NWPs can authorize only activities that have minimal adverse effects on the aquatic environment. Several commenters agreed that a water quality management plan should not be required for activities that have minimal adverse effects and requested that the Corps add

appropriate language to General Condition 9 because the draft general condition published in the July 21, 1999, **Federal Register** notice does not provide that flexibility. Several commenters stated that the requirement for water quality management plans will substantially increase costs for local governments and the regulated public. One commenter suggested that the Corps should rely on standard best management practices to protect water quality, instead of requiring case-specific water quality management plans.

A goal of the Clean Water Act, as stated in section 101 of the Act, is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. We maintain our position that the requirement for a water quality management plan for certain NWPs is necessary to ensure that activities authorized by those NWPs do not result in more than minimal adverse effects to water quality. We can require water quality management plans through our statutory authority under section 404 of the Clean Water Act, because the goal stated in section 101 applies to all sections of the Clean Water Act.

A water quality management plan is a mechanism to ensure that the activity authorized by NWP causes only minimal adverse effects on water quality. It can include stormwater management techniques and vegetated buffers next to open waters to protect water quality. The terms of General Condition 9 are not intended to replace existing state or Tribal section 401 requirements. In regions with strong water quality programs, district engineers will defer to state, Tribal, and local requirements and will not require water quality management plans as special conditions of NWP authorizations. If the 401 agency or other state or local agency does not require adequate measures to protect downstream water quality, we have the authority to require measures, including the construction of stormwater management facilities or the establishment of vegetated buffers next to open waters, that will minimize adverse effects to water quality.

If a district engineer determines that a water quality management plan is unnecessary because the authorized work will result in minimal adverse effects on water quality, then a water quality management plan is not required. For example, the district engineer may determine that a water quality management plan is not required for an activity in a watershed that is not substantially developed. In addition, a water quality management plan is not necessary for activities that are serviced by a regional stormwater management system. We have modified the first sentence of paragraph (b) by replacing the phrase ''provide for protection of aquatic resources'' with the phrase ''will ensure that the authorized work does not result in more than minimal degradation of water quality'' to clarify why a water quality management plan may be required by the district engineer.

We have also modified the second sentence of paragraph (b) by replacing the word ''project'' with the phrase ''water quality management plan.'' This clarifies that stormwater management is a component of the water quality management plan. If the district engineer determines that a water quality management plan is not required because a specific activity will have minimal adverse effects on water quality, then stormwater management methods are not necessary if they are not required by state or local governments.

We recognize that the development and implementation of a water quality management plan may increase costs to the regulated public. It is important to note that the purpose of the water quality management plan is to ensure that the authorized work results in minimal adverse effects on the aquatic environment, especially water quality. In most cases, the requirements of the Section 401 water quality certification and state or local stormwater management requirements will adequately address these issues. These state and local requirements already incur costs on project proponents and we do not agree that the requirements of General Condition 9 will impose substantial additional costs. Since site conditions are extremely variable between geographic regions of the country, we do not agree that generic best management practices are a better approach to address water quality concerns.

Several commenters objected to the requirements of General Condition 9, because the Corps does not define what constitutes a ''strong'' state water quality program. These commenters said that this requirement would confuse the regulated public because they cannot know when a water quality management plan will be required by the Corps for a particular NWP activity. Two commenters recommended that the Corps add language to General Condition 9 stating that water quality management plans will not be required in states with strong water quality programs. A commenter objected to the proposed modification of General Condition 9 because a district engineer may require modifications that conflict with the requirements of a state-issued WQC. Another commenter said that the Corps should coordinate water quality management requirements with state or local authorities, which would reduce redundancy and assist in enforcement.

We cannot define, at a national level, what constitutes a strong state water quality program. Corps districts can make a programmatic determination that a particular state, Tribe, or local government has a strong water quality program and therefore the Corps would not require project-specific water quality management plans in those jurisdictions. Where these programmatic determinations have not been made, district engineers will determine, on a case-by-case basis, when water quality management plans are necessary. A water quality management plan for a particular activity may be required as a special condition to the NWP authorization, whereby the permittee would submit the specifics of the water quality management plan to the district engineer prior to starting the work. We do not agree that it is necessary to explicitly state in the text of General Condition 9 that water quality management plans will not be required in states with strong water quality programs because this issue is adequately addressed in the preamble.

It is unlikely that a district engineer will request modifications to a particular activity that conflicts with WQC requirements, although the district engineer may require additional measures that are more stringent than the WQC conditions. We encourage district engineers to coordinate water quality management requirements with state and local authorities, to effectively implement the provisions of General Condition 9.

One commenter suggested that the Corps add language to this general condition that explains that the standard to be achieved is ''minimal'' degradation, not ''no'' degradation of water quality. This commenter cited the requirement of minimal degradation that was discussed in the preamble in the July 21, 1999, **Federal Register** notice. Two commenters objected to the proposed modification of General Condition 9 because the Corps has not defined what constitutes acceptable ''minimal degradation to water quality'' or ''minimal adverse effects to water quality.''

General Condition 9 does not contain a ''no degradation'' standard. General Condition 9 requires methods to minimize degradation of downstream aquatic habitats. We cannot provide

national definitions of the terms ''minimal degradation'' or ''minimal adverse effects'' to water quality because aquatic systems vary considerably across the country. District engineers will utilize their knowledge of local aquatic resources to make these determinations.

Several commenters requested that the Corps add language to this general condition that states that the requirements of General Condition 9 apply only to activities that result in discharges of dredged or fill material into waters of the United States, not to activities in uplands. These commenters cited the example in the preamble to the July 21, 1999, **Federal Register** notice, which indicated that the water quality management plan does not apply to the entire upland site if only a small amount of waters of the United States are filled to provide access to an upland development site. Two commenters stated that the Corps needs to provide a definition of the term ''project'' as it is used in the context of this general condition, because the general condition requires the establishment and maintenance of vegetated buffers if the activity occurs in the vicinity of open waters. These commenters asserted that the Corps cannot require stormwater management facilities or vegetated buffers to offset adverse effects caused by activities outside of waters of the United States.

The requirements for water quality management plans, including vegetated buffers next to open waters, apply only to those NWP activities that involve discharges of dredged or fill material into waters of the United States. Water quality management plans are required only for those NWPs listed in paragraph (b). We have also modified this general condition to state that vegetated buffers next to open waters are an important component of the water quality management plan. We have included a reference to General Condition 19, which contains the vegetated buffer requirements for the NWPs, in General Condition 9.

The requirement for a water quality management plan does not apply to activities in uplands, if the discharge of dredged or fill material into waters of the United States constitutes only a small portion of the entire activity. In this situation, if a water quality management plan is necessary to ensure that the activity in waters of the United States causes only minimal degradation of water quality, the water quality management plan would address only the specific activity that results in discharges or dredged or fill material into waters of the United States. However, if a large proportion of the project area is comprised of waters of the United States, then the water quality management plan should consider those upland areas within the project area to ensure that the overall activity will result in minimal adverse effects to water quality. Since the applicable area for the water quality management plan depends on the proportion of the project area that is composed of waters of the United States, we cannot provide a definition of the term ''project'' for the purposes of this general condition.

A commenter requested that the Corps specify the information that should be included in a water quality management plan. One commenter stated that the general condition should include a qualitative assessment procedure. Several commenters stated that water quality management requirements must be directly related to an identifiable water quality concern that is caused by the authorized discharge of dredged or fill material into waters of the United States. A commenter recommended adding a statement to this general condition explaining that water quality mitigation will be required when necessary to address site-specific water quality concerns and that the required mitigation will be accomplished through the most cost-effective method to address those concerns. Several commenters suggested that the Corps add a definition of the term ''practicable'' as it is used in the context of this general condition.

We cannot specify the components of a water quality management plan because these requirements will vary across the country. In general, stormwater management techniques and vegetated buffers next to open waters can be components of a water quality management plan. The language of General Condition 9 is intended to allow flexibility and minimize the amount of information necessary to determine compliance with its requirements. We cannot include a qualitative assessment procedure in the text of the general condition because of the variability in aquatic resources across the country. District engineers have their own criteria for assessing impacts to water quality, based on local conditions. District engineers will use their judgement to qualitatively determine if a particular activity complies with this general condition and will not require extensive analyses or reviews. Detailed studies are not required. We contend that these assessments should be left to the judgement of district engineers and will not establish a national assessment procedure. Water quality management requirements will be directly related to the activity authorized by NWP, to ensure that the authorized activity results in minimal adverse effects on local water quality.

Water quality management techniques must be practicable and capable of being accomplished by the permittee. For the purposes of General Condition 9, the definition of the term ''practicable'' is the same as the definition in the first sentence of paragraph (a) of General Condition 19. Measures required by district engineers to ensure that activities authorized by NWPs do not result in more than minimal adverse effects to water quality must be practicable, while allowing the proposed work to accomplish the overall project purpose. For example, the establishment and maintenance of vegetated buffers next to open waters on the project site will help protect water quality, but the width of those vegetated buffers must not reduce the amount of developable land on the project site to the extent that the proposed work is no longer technologically or economically viable.

One commenter recommended expanding the water quality management plan requirement to NWPs 3, 7, 8, 21, 23, 29, and 33. One commenter indicated that water quality management plans should not be required for NWP 44 activities because such plans are already required for hard rock/mineral mining operations. One commenter suggested waiving the water quality management plan requirement for discharges of dredged or fill material into ephemeral streams. One commenter stated that the requirement for stormwater management should apply only to activities that impact more than 4 acres of land.

We do not agree that water quality management plans should be required for activities authorized by NWPs 3, 7, 8, 21, 23, 29, and 33. We addressed the applicability of this general condition to NWP 21 in the preamble of the July 21, 1999, **Federal Register** notice and have not changed our position on this issue. The other NWPs listed in the first sentence of the previous paragraph authorize activities that typically have minor impacts on water quality. Even though other laws or regulations require water quality management plans for hard rock/mineral mining activities, we are not aware of a similar requirement for aggregate mining activities. Therefore, we do not agree that NWP 44 should be removed from the list of applicable NWPs. District engineers can determine, on a case-by-case basis, that water quality management plans are not required for activities involving

discharges of dredged or fill material into ephemeral streams. We do not agree that there should be a minimum project size to determine when stormwater management facilities are necessary.

Numerous commenters addressed the vegetated buffer requirement in the proposed modification of this general condition. Two commenters requested clarification whether the establishment and maintenance of vegetated buffers are required for all NWPs or only the NWPs listed in the second sentence of the proposed modification of General Condition 9. Two commenters said that vegetated buffers should not be required under all circumstances and that district engineers should use their discretion on a case-by-case basis. Several commenters recommended the removal of the vegetated buffer requirement from this general condition. Two commenters stated that vegetated buffers should be required only to address site-specific water quality concerns when the establishment and maintenance of vegetated buffers is practicable.

For the purposes of General Condition 9, vegetated buffers should be an important component of a water quality management plan. The vegetated buffer requirements for the NWPs are discussed in paragraph (b) of General Condition 19. If there are not any open waters on the project site, then vegetated buffers are not required. In addition, vegetated buffers are not required for Section 404 activities that result only in minimal adverse effects to water quality. District engineers will determine, on a case-by-case basis, when vegetated buffers are necessary to ensure that the authorized work results only in minimal adverse effects. The use of vegetated buffers in the NWP program is discussed in more detail in a previous section of this **Federal Register** notice.

Several commenters requested that the Corps clarify what is meant by the phrase ''in the vicinity'' of an open waterbody as it relates to the vegetated buffer requirement. Two commenters recommended that the Corps replace ''vicinity'' with ''contiguous'' to more clearly establish a direct relationship between the vegetated buffer requirement and the impacts caused by the authorized work. Two commenters said that the phrase ''to the maximum extent practicable'' needs to be defined for the purposes of the vegetated buffer requirement.

The term ''in the vicinity'' as used in the context of this general condition, means the parcel where the activity is located. If there are not any open waters on the project site, then vegetated buffers are not required. We have replaced the word ''adjacent'' with the word ''next'' to clarify that the vegetated buffer is to be established and maintained on land next to the open waterbody. We do not agree that the word ''vicinity'' should be replaced with ''contiguous'' because the requirement for vegetated buffers applies only to open waters on the project site. We have removed the phrase ''to the maximum extent practicable'' as it was used in the context of the vegetated buffer requirement in the proposed general condition. This general condition is adopted with the modifications discussed above.

11. Endangered Species: In the July 21, 1999, **Federal Register** notice, we proposed to modify this general condition by adding a requirement for the prospective permittee to submit, with the notification, the name(s) of the endangered or threatened species that may be affected by the proposed work or utilize designated critical habitat that may be affected by the proposed work.

One commenter objected to the requirement for prospective permittees to notify the Corps if there may be threatened or endangered species in the vicinity of the proposed activity. Another commenter objected to the requirement for applicants to notify the Corps for any activity that will occur in designated critical habitat. A commenter stated that the requirement to notify the district engineer if listed species or critical habitat may be affected by the proposed activity should apply to both Federal and non-Federal applicants. Two commenters opposed the notification requirement, stating that project proponents cannot know if their projects are located in designated critical habitat. Several commenters stated that the Corps is responsible as the lead Federal agency for compliance with section 7 of the Endangered Species Act (ESA) and that the Corps cannot delegate to the prospective permittee the determination whether a listed species or their critical habitat would be affected by the proposed work.

The notification requirements for General Condition 11 are necessary to ensure that activities authorized by NWPs comply with the requirements of ESA. Federal permittees are required to conduct Section 7 ESA consultation directly with either the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), depending on which species may be affected by the proposed work. Prospective permittees should contact the FWS or NMFS to determine if their activities may affect Federally-listed endangered or threatened species or destroy or adversely modify designated critical habitat. We recognize that we are responsible for determining whether an activity is likely to jeopardize the continued existence of a threatened or endangered species or whether an activity will adversely modify or destroy designated critical habitat, but we cannot require permittees to submit notifications for all NWP activities so that we can determine compliance with ESA. Division engineers can regionally condition the NWPs to require notification for NWP activities in known locations of Federally-listed endangered or threatened species and their designated critical habitat.

One commenter suggested that a specific distance should be used to define the phrase ''in the vicinity'' as it is used in this general condition. Another commenter said that the Corps needs to define what constitutes ''affecting critical habitat'' as it applies to the NWPs. One commenter stated that the word ''destroy'' should be defined or deleted from this general condition. A commenter stated that any activity that may affect a Federally-listed endangered or threatened species or its critical habitat must be reviewed by the FWS. Another commenter said that individual permits should be required for activities that may affect endangered or threatened species or their critical habitat.

We do not agree that a specific distance should be established to define the term ''vicinity'' because the area that constitutes the ''vicinity'' varies from species to species. Activities in waters of the United States within critical habitat have the potential to destroy or adversely modify that critical habitat and should be reviewed by the Corps to ensure compliance with ESA. The phrase ''destruction or adverse modification'' is defined at 50 CFR 402.02 and this definition applies to the phrase ''destroy or adversely modify'' that is found in General Condition 11. We will consult with FWS and NMFS for those activities that may affect or jeopardize Federally-listed endangered or threatened species or may destroy or adversely modify the designated critical habitat of those species. We do not agree that all activities that may affect endangered or threatened species or their critical habitat should be reviewed under the individual permit process because these activities can often be authorized by NWPs in compliance with ESA.

As a consequence of the NWP/General Permit Programmatic ESA Section 7 consultation, district engineers will develop Standard Local Operating Procedures for Endangered Species and

may develop other procedures to ensure that the NWPs and general permits will comply with the ESA. In addition, as part of this process, the Corps may need to adopt regional conditions for endangered species. To ensure that these conditions and procedures are properly coordinated, the decision authority for adding regional conditions for endangered species has been delegated to the district engineer in General Condition 11. This general condition is adopted with the modifications discussed above.

12. Historic Properties: In the July 21, 1999, **Federal Register** notice, we did not propose any changes to this general condition. One commenter objected to requiring compliance with the National Historic Preservation Act (NHPA) for activities authorized by NWPs. Another commenter opposed the notification requirement of General Condition 12 and asked how a permittee would know if his or her activity will affect historic properties. One commenter stated that the requirement to notify the district engineer if eligible cultural resources may be affected by a proposed activity should apply to both Federal and non-Federal applicants. A commenter said that individual permits should be required for all activities that may affect eligible cultural resources. One commenter indicated that the Corps should not require extensive documentation from an applicant demonstrating compliance with the NHPA.

All activities that require a Federal license (including NWPs) must comply with the NHPA. A prospective permittee can contact the local State Historic Preservation Officer to determine if the proposed work will affect known historic properties. Both Federal and non-Federal permittees are required to notify district engineers when authorized activities may affect listed or eligible historic properties. We do not agree that all activities that may affect cultural resources should be reviewed under the individual permit process because these activities can often be authorized by NWPs in compliance with the NHPA. The Corps requires the minimum documentation necessary to ensure compliance with the NHPA. This general condition is retained without change.

13. Notification: In the July 21, 1999, **Federal Register** notice, we proposed to change the 30 day PCN review period to 45 days, and include a requirement for district engineers to determine whether a PCN is complete within 30 days of the date of receipt.

Two commenters supported the proposed changes to the PCN review period. Many commenters objected to the proposed changes, stating that allowing 30 days for a completeness review and 45 days to determine whether the proposed work qualifies for NWP authorization makes the NWP process similar to the standard permit process, in terms of processing times. Two commenters remarked that the 30-day completeness review period should be included in the 45-day PCN review period. Two commenters said that the PCN should be considered complete if the Corps does not request additional information prior to the end of the 30 day completeness review period, so that the Corps cannot defer processing the PCN indefinitely. One commenter suggested that the Corps notify prospective permittees, through telephone calls or postcards, if their PCNs are complete. This commenter said that such a process would relieve some burdens associated with the proposed revisions to the notification process. Another commenter recommended modifying General Condition 13 to impose a time limit for the Corps to notify prospective permittees that all of the requested information has been received.

The 30 day completeness review period and the 45 day PCN review period are not independent of each other (i.e., they do not add up to a 75 day review period for NWP activities). If a prospective permittee submits a complete PCN to the Corps district office, the 45 day PCN review period begins on the date of receipt and the district engineer must decide whether to issue an NWP verification or exercise discretionary authority within 45 days. If the 30 day completeness review period has passed since the date of receipt of a PCN and the district engineer has not requested additional information to make the PCN complete, the applicant can assume the PCN is complete.

Other commenters recommended different time limits for PCN completeness reviews. One commenter said that the completeness review should be done on the date of receipt of the PCN and the applicant should be notified immediately that additional information is necessary to begin the PCN process. Other recommended time periods for completeness review included 7, 10, and 15 days. One commenter objected to the 30 day completeness review period, stating that it was longer than the completeness review period for standard permits (i.e., 15 days).

It is impractical for district engineers to conduct completeness reviews on the date of receipt. We believe the 30 day completeness review period is necessary because district engineers can make only one request for the information needed for a complete PCN.

Two commenters requested clarification whether the 45 day PCN review period starts on the day the Corps determines the PCN to be complete or the date the complete PCN is received in the district office. One commenter asked if the verification of wetland delineations would be done within the 30 day completeness review period. Two commenters supported allowing only one request for additional information. One commenter asserted that allowing only one request for additional information would cause Corps personnel to request large amounts of information, whether or not that information is necessary for the review of the PCN.

The 45 day PCN review period begins on the date of receipt of a complete PCN. If a complete PCN is submitted, the 45 day PCN review period starts on the date of receipt. If the PCN is incomplete and the prospective permittee submits the necessary information to make the PCN complete, the 45 day PCN review period starts on the date the additional information is received by the district engineer. The verification of delineations of special aquatic sites will be conducted during the 30 day completeness review period. A complete PCN is comprised of the information listed in paragraph (b) of General Condition 13. If the prospective permittee provides all of the relevant information listed in paragraph (b), then the PCN is complete (provided any delineations of special aquatic sites are accurate) and the 45 day PCN review period begins. District engineers cannot request information not listed in paragraph (b). If the district engineer believes that the proposed work may result in more than minimal adverse effects on the aquatic environment, based on the information required for the PCN, then he or she should exercise discretionary authority and require an individual permit to conduct a more thorough review of that activity.

Many commenters suggested that the Corps retain the 30 day PCN review period. One commenter said that 15 days would be adequate for the Corps to determine whether a complete PCN would qualify for NWP authorization and another commenter suggested a 40 day review period. Many commenters stated that the larger workload caused by the proposed new and modified NWPs is not sufficient justification for increasing the PCN review period to 45 days and requested that the Corps maintain the 30 day period.

We contend that the 45 day period is necessary to determine if a PCN is complete (within 30 days), conduct agency coordination if necessary, and review the PCN to determine if the proposed work is authorized by NWP. NWP 26 had a PCN review period of 45 days and we believe it is necessary to retain this time period for the new NWPs.

Several commenters stated that paragraph (b) of General Condition 13 should clearly state what is required for a complete PCN, so that applicants will know what they need to submit to the district engineer. These commenters also said that clearly stating what is required for a complete PCN would promote consistency. One commenter requested that the Corps clarify whether the phrase ''additional information'' refers only to the items necessary to make the PCN complete or to any other information that the district engineer believes is necessary for the review of the PCN. One commenter recommended adding a requirement for prospective permittees to supply all information identified in the NWP, special conditions, and regional conditions, as well as any information required by the district engineer. Two commenters objected to the amount of information required for PCNs.

Paragraph (b) of General Condition 13 lists all of the information necessary for a complete PCN. Corps districts can provide checklists to assist prospective permittees, especially if they have regional conditions that specify additional information that must be submitted with PCNs. The phrase ''additional information'' as used in the context of General Condition 13 refers only to the information that is necessary to make the PCN complete. We have limited the amount of information that must be submitted with a PCN to the minimum necessary to determine whether the proposed work will result in minimal adverse effects on the aquatic environment, individually and cumulatively.

Two commenters said that the statement in General Condition 13 indicating that the permittee can commence work if the district engineer does not respond to the PCN within 45 days is meaningless because of the suspension procedures at 33 CFR 330.5(d)(2), which allow the Corps to stop NWP activities in progress. These commenters said that the permittee cannot safely proceed with the activity until he or she receives authorization from the Corps.

Some prospective permittees may want assurance that the proposed work is authorized by NWP and will not start work until a written verification is received from the Corps. The procedures at 33 CFR 330.5(d)(2) provide a process where a permittee who begins work after the 45 day PCN period expires can make their case that they have expended resources and it would be inequitable for the Corps to modify their project.

One commenter suggested that the PCN review period should be waived in states using monthly coordination meetings to review and process permit applications. One commenter suggested adding a fourth item in paragraph (a), which would state that the prospective permittee shall not begin the activity ''If the District Engineer has notified the prospective permittee in writing that the notification is still incomplete.''

Paragraph (a) of General Condition 13 does not prohibit district engineers from responding to PCNs in a more timely manner provided all other requirements are completed. Paragraph (a) clearly states that district engineers will notify prospective permittees if their PCNs are still incomplete, and since the 45 day clock does not start until the PCN is complete, the prospective permittee may not start work.

One commenter stated that all PCNs should include delineations of special aquatic sites. Another commenter recommended adding NWPs 3 and 31 to paragraph (b)(4). One commenter said that delineations of riffle and pool complexes should not be required for PCNs because such a requirement imposes burdens on applicants, especially on large projects such as highways. A commenter suggested that the phrase ''submerged aquatic vegetation'' used in paragraph (b)(4) should refer only to vascular plants.

We do not agree that delineations of special aquatic sites should be submitted with all NWP PCNs. Since NWPs 3 and 31 authorize maintenance activities, it is not necessary to submit delineations of special aquatic sites with PCNs for these activities. Maps indicating stream segments containing riffle and pool complexes and their location can be used as delineations of these special aquatic sites. It is not necessary to map each riffle and pool complex within a stream. The phrase ''submerged aquatic vegetation'' refers only to vascular plants, not algae.

One commenter suggested that the Corps revise paragraph (b) of General Condition 13 to require documentation of baseline conditions for NWP 3 activities. This commenter also recommended that PCNs for NWP 3, 7, and 31 activities should include locations of disposal sites for dredged or excavated material. One commenter said that detailed mitigation and monitoring plans should be submitted with PCNs for activities authorized by NWPs 12, 14, 39, 40, 41, 42, 43, and 44. One commenter indicated that a statement discussing on-site avoidance and minimization should be required for all NWP activities that require PCNs. Another commenter asserted that a statement of avoidance and minimization should be required for NWPs 12, 14, 40, 41, and 42. One commenter said that the information required to be submitted with a PCN is inadequate to ensure compliance with ESA.

The text of paragraph (iii) of NWP 3 states that the permittee ''should'' provide evidence to justify the extent of the proposed restoration, but such evidence is not required. We do not agree that it is necessary to include location maps of disposal sites for dredging or excavation activities authorized by NWPs 3, 7, and 31, because the material removed from waters of the United States will not be deposited in waters of the United States, unless the district engineer issues a separate authorization to discharge that material into waters of the United States. Under that separate authorization process, the district engineer will assess the impacts to the disposal site. We maintain our position that compensatory mitigation plans, including monitoring plans, submitted with a PCN can be either conceptual or detailed. District engineers can require more detailed compensatory mitigation plans through special conditions of the NWP authorization where appropriate. We also do not agree that avoidance and minimization statements should be required for other NWPs. We maintain our position on this matter as it was discussed in the July 21, 1999, **Federal Register** notice. The information that must be submitted with a PCN is adequate for the Corps to make its initial determination concerning compliance with ESA.

Two commenters noted that the Corps did not add a provision to paragraph (b) of General Condition 13 that requires prospective permittees to submit a list of names of Federally-listed endangered or threatened species and the names or locations of historic properties that may be affected by the proposed work. The Corps stated in the July 21, 1999, **Federal Register** notice (64 FR 39340) that it would add these provisions to General Condition 13.

We have added these requirements to paragraph (b) of General Condition 13 as subparagraphs (17) and (18), respectively. In addition, we have modified subparagraph (b)(9) to comply

with the recent modification of NWP 29, which reduced the acreage limit to ¼ acre (see 64 FR 47175). We have also added subparagraph (b)(19), which describes the documentation that must be submitted with the PCNs for certain NWP activities within 100-year floodplains.

In paragraph (d) of the proposed modification of General Condition 13, one commenter objected to the use of the term ''net'' in the context of determining whether the adverse effects to the aquatic environment are minimal, after considering compensatory mitigation that offsets impacts authorized by NWPs. This commenter says that the wording of the second sentence of paragraph (d) is contrary to the Corps policy of determining that impacts authorized by NWPs are minimal without considering mitigation. One commenter asked if the term ''mitigation'' in paragraph (d) refers to compensatory mitigation. Another commenter requested a definition of the term ''adverse'' as it is used in the context of paragraph (d). One commenter requested that the Corps clarify whether the word ''work'' in paragraph (d) refers only to mitigation work or the permitted activity.

The language of paragraph (d) complies with Corps regulations for the NWP program, specifically 33 CFR 330.1(e)(3), which provides for the use of compensatory mitigation to offset losses of waters of the United States authorized by NWPs and ensure that the adverse effects on the aquatic environment are minimal. The word ''mitigation'' in the second sentence of paragraph (d) refers to the mitigation process. We do not agree that it is necessary to provide a definition of the term ''adverse'' since the commonly used definition is applicable. The word ''work'' refers to the proposed activity, but the compensatory mitigation is also considered when determining whether the adverse effects on the aquatic environment are minimal.

Two commenters supported the 1 acre threshold for agency coordination. One commenter suggested a ⅓ acre threshold. A number of commenters said that agency coordination should be required for all NWP activities that require PCNs. One commenter recommended agency coordination for activities that result in the loss of greater than 250 linear feet of stream bed. One commenter said that PCNs should be coordinated with the U.S. FWS for any NWP activity that could affect Federally-listed endangered or threatened species or their habitats. Another commenter indicated that agency coordination of PCNs should be conducted for any NWP activities in streams or aquatic resources of natural importance.

We are reducing the 1 acre threshold for agency coordination to ½ acre because most of the new NWPs have maximum limits of ½ acre. There will be coordination of some PCNs because there are NWPs based on other government programs, such as NWPs 17 and 38, that can authorize activities that result in the loss of greater than ½ acre of waters of the United States. If those NWPs require submission of a PCN to the district engineer and the proposed work will result in the loss of greater than ½ acre of waters of the United States, then the Corps will conduct agency coordination. Activities that may affect Federally-listed endangered or threatened species or their critical habitat will be coordinated with the U.S. FWS or NMFS, as appropriate. District engineers can conduct agency coordination in other circumstances at their discretion.

One commenter asked for clarification whether a PCN is transmitted to agencies upon receipt of the PCN or whether the PCN must be determined to be complete before it is sent to the agencies. Two commenters said that, for activities requiring agency coordination, the applicant should mail copies of the PCN to the review agencies to expedite the PCN process. One commenter recommended adding the Federal Emergency Management Agency (FEMA) to the list of agencies for coordination. Another commenter said that the Corps should provide written responses to agency comments received in response to PCNs. One commenter recommended inserting the word ''aquatic'' between the words ''adverse environmental'' in paragraph (e).

We do not start agency coordination until we determine that the PCN is complete. It would not be advantageous for a prospective permittee to submit a PCN directly to review agencies because the PCN may not be complete. District engineers can, at their discretion, include FEMA with the other review agencies. We do not agree that district engineers should provide written responses to agency comments, except where Essential Fish Habitat (EFH) conservation recommendations are received from NMFS in response to a PCN. There is a statutory requirement in the Magnuson-Stevens Fishery Conservation and Management Act for Federal action agencies to provide written responses to EFH conservation recommendations. We have modified paragraph (e) to address this requirement. We agree that we should include the word ''aquatic'' in the first sentence of paragraph (e).

Two commenters opposed the proposed changes to the agency coordination period. Three commenters said that 15 days is enough time for agency coordination. Other commenters suggested 5, 10, or 30 days for agency coordination. One commenter recommended 45 days for agency coordination, with the ability for agencies to receive an extension of time. One commenter requested clarification whether the 25 day agency review period is added to the 45 day PCN review period or whether the agency coordination process occurs during the 45 day PCN review period. One commenter said that the 25 day agency coordination period conflicts with ESA regulations, which provide 30 days to respond to a request for a list of species that may occur in the project area.

We will maintain the 10 day period for agencies to request an additional 15 days to provide substantive, site-specific comments on PCNs. Twenty-five days is sufficient for agencies to comment on PCNs. The agency coordination process occurs during the 45 day PCN review period. During the agency coordination period, the Corps is not requesting a list of Federally-listed endangered or threatened species that may be in the project area. Therefore, the agency coordination period does not violate ESA regulations.

Several commenters objected to the text in paragraph (f) that requires wetland delineations to be performed in accordance with the current method required by the Corps. These commenters assert that this language allows Corps personnel to use methods and criteria that are not in the 1987 *Corps of Engineers Wetlands Delineation Manual* and expand the Corps jurisdiction. These commenters said that the text of this paragraph should be revised to specifically reference the 1987 *Corps of Engineers Wetlands Delineation Manual.* Another commenter recommended that paragraph (f) include a statement that the permittee is responsible for the accuracy of the delineation of special aquatic sites.

We do not agree with these commenters. The only currently acceptable method that the Corps uses for delineating wetlands is the 1987 *Corps of Engineers Wetlands Delineation Manual* and associated guidance. We will not change the text of paragraph (f) because the required delineation manual may change in the future.

Several commenters recommended combining paragraph (g) of General

Condition 13 with General Condition 19 so that the mitigation requirements of the NWPs would be in one general condition. One commenter suggested that deed restrictions and protective covenants should be required as part of a compensatory mitigation proposal submitted with a PCN. One commenter recommended that the Corps reinstate the following language into subparagraph (ii) of paragraph (g): ''* * *should consider mitigation banking and other forms of mitigation including contributions to wetland trust funds, in lieu fees to non-profit land restoration and stewardship organizations, State or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of wetlands.''

We have moved paragraph (g) of General Condition 13 to General Condition 19. Prospective permittees can submit either conceptual or detailed compensatory mitigation proposals with their PCNs, but they are not required to submit deed restrictions or protective covenants at that time. As special conditions to a NWP verification, the district engineer may require deed restrictions or protective covenants for compensatory mitigation projects. We do not agree that it is necessary to put the referenced text back into the general condition because General Condition 19 allows district engineers the flexibility to consider all appropriate forms of compensatory mitigation, including mitigation banks and other consolidated approaches to compensatory mitigation.

One commenter objected to the statement in paragraph (g) of the proposed modification of General Condition 13 that identifies mitigation banks, in lieu fee programs, and other types of consolidated mitigation as preferred methods. This commenter said that if compensatory mitigation is necessary, the method should be at the discretion of the applicant and consider economic and environmental factors. This commenter also stated that the Corps should only determine if the compensatory mitigation method chosen by the applicant is appropriate.

Our preference for consolidated compensatory mitigation methods such as mitigation banks does not prohibit the use of other methods to provide compensatory mitigation, if the district engineer determines that the other methods are appropriate and adequately offset losses of aquatic resource functions and values. General Condition 19 clearly states that mitigation must be practicable, and the district engineer will consider costs and environmental factors when determining if the prospective permittee's compensatory mitigation proposal is acceptable.

Two commenters stated that the Corps should post PCNs on the Internet. Another commenter concurred with the Corps position against posting PCNs on the Internet, stating that such a process would result in delays to the regulated public and provide no additional value to the review of PCNs.

As discussed in the July 21, 1999, **Federal Register** notice, we maintain our position that posting of PCNs on Internet home pages would provide no added value to our review of these PCNs.

This general condition is adopted with the modifications discussed above.

15. Use of Multiple Nationwide Permits: In the July 21, 1999, **Federal Register** notice, we proposed to modify this general condition to ensure that the use of more than one NWP to authorize a single and complete project will result in minimal adverse effects on the aquatic environment.

One commenter supported the proposed modification of General Condition 15. Many commenters objected to the proposed modification of this general condition, stating that it would prohibit the authorization of activities with minimal adverse effects. One commenter said that the proposed modification is contrary to 33 CFR 330.6(c) and must be addressed through rulemaking. A number of commenters indicated that the use of more than one NWP to authorize a single and complete project should be unrestricted because of the low acreage limits of the proposed new and modified NWPs. Several commenters objected to permittees using more than one NWP to authorize a single and complete project. One commenter said that the proposed modification of this general condition will cause more piecemealing of activities and discourage watershed-based planning and compensatory mitigation.

The modification of General Condition 15 is necessary to ensure that the use of more than one NWP to authorize a single and complete project does not result in more than minimal adverse effects on the aquatic environment, individually and cumulatively. The proposed modification is not contrary to 33 CFR 330.6(c) because that provision in the NWP regulations simply states that two or more different NWPs can be combined to authorize a single and complete project. With the modification of General Condition 15, we are not prohibiting the use of more than one NWP to authorize a single and complete project. Instead, we are simply imposing an acreage limit based on the maximum specified acreage limit of those NWPs used to authorize a single and complete project. We do not agree that the modification of General Condition 15 will encourage piecemealing of activities, since the definition of the term ''single and complete project'' is clearly defined at 33 CFR 330.2(i) and this definition has not changed. The modification of this general condition is adopted as proposed.

16. Water supply intakes: In the July 21, 1999, **Federal Register** notice, we did not propose any changes to this general condition. One commenter objected to this general condition, stating that it is too vague, excessive, and difficult to manage. This commenter recommend that the Corps require submission of a PCN when a proposed activity is within 1 mile upstream of a public water supply intake.

District engineers will determine whether an activity is subject to this general condition. Imposing a notification requirement based on a distance from an intake structure is not appropriate for a national condition, but division engineers can regionally condition the NWPs to establish specific distances from public water supply intakes. This general condition is adopted without change.

17. Shellfish Beds: In the July 21, 1999, **Federal Register** notice, we proposed to change the title of this general condition from ''Shellfish Production'' to ''Shellfish Beds.'' We also proposed to change the phrase ''concentrated shellfish production'' to ''concentrated shellfish populations'' because the word ''production'' implies that the general condition applies only to areas actively managed for shellfish production.

Two commenters recommended that the Corps change this general condition from a prohibition against activities in areas of concentrated shellfish populations to a notification requirement when any proposed NWP activity may cover concentrated shellfish populations. One commenter objected to changing the title of this general condition from ''Shellfish Production'' to ''Shellfish Beds.'' This commenter also indicated that the restrictions imposed by this general condition are too broad.

With the exception of NWP 4, we do not agree that the NWPs should authorize activities in concentrated shellfish beds. Changing the terms of this general condition from ''shellfish production'' to ''shellfish beds'' is necessary to ensure that activities authorized by NWPs result in minimal

adverse effects on the aquatic environment, especially in areas of concentrated shellfish populations that may be harvested for human consumption. The modification of this general condition is adopted as proposed.

18. Suitable Material: In the July 21, 1999, **Federal Register** notice, we did not propose any changes to this general condition, but one commenter requested further definitions of suitable material and debris that can be used.

We do not agree that it is necessary to further define what constitutes ''suitable material'' for the purposes of this general condition. It is impractical to provide a comprehensive list of unsuitable materials. If there are questions concerning the suitability of a particular material, the permittee should contact the appropriate Corps district office and ask if that material is considered suitable for the purposes of General Condition 18. This general condition is adopted without change.

19. Mitigation: In the July 21, 1999, **Federal Register** notice, we proposed several changes to this general condition. Several commenters recommended combining the mitigation information in paragraph (g) of General Condition 13 with this general condition. One commenter stated that this general condition is contrary to the 1990 mitigation MOA. Numerous commenters said that General Condition 19 should specify that mitigation is required, to the maximum extent practicable, in the same watershed as the impact site.

We have combined the provisions of paragraph (g) of General Condition 13 with the provisions of General Condition 19, so that the mitigation requirements for the NWPs are in General Condition 19. The 1990 mitigation MOA applies only to standard individual permits, not general permits such as the NWPs. Although we encourage permittees to locate compensatory mitigation in the same watershed as the site of the authorized work, there are occasions where it may be necessary or more beneficial to the aquatic environment to implement compensatory mitigation outside of the watershed. For example, restoring wetlands in a degraded watershed to compensate for losses of wetlands in a watershed with less impacts may be better for the overall aquatic environment.

One commenter suggested that General Condition 19 should contain a provision that allows district engineers to determine that compensatory mitigation is unnecessary if the adverse effects on the aquatic environment are minimal without compensatory mitigation. Several commenters objected to the phrase in the second sentence of the proposed modification of General Condition 19 which states that compensatory mitigation is required ''_* * * at least to the extent that adverse environmental effects to the aquatic environment are minimal.'' These commenters contend that this language allows the Corps to require mitigation in excess of the amount necessary to offset the authorized impacts.

In accordance with the NWP regulations, district engineers can determine that compensatory mitigation is not necessary to ensure that the authorized work results in minimal adverse effects on the aquatic environment. District engineers will require only the amount of compensatory mitigation that is needed to ensure that the net adverse effects on the aquatic environment are minimal, individually and cumulatively.

One commenter supported the inclusion of enhancement and preservation in the definition of compensatory mitigation. Another commenter said that the definition of mitigation should be expanded from restoration, creation, enhancement, preservation, and vegetated buffers to include avoiding, minimizing, rectifying, reducing, or compensating for losses of aquatic resources to make it consistent with paragraph (g) of General Condition 13, which recognizes this broader definition.

Since we have moved the provisions of paragraph (g) of General Condition 13 to General Condition 19, this general condition recognizes these types of mitigation. Rectifying impacts to the aquatic environment is similar to the enhancement and restoration of aquatic resources. Reducing impacts to the aquatic environment is similar to minimization.

A number of commenters objected to the removal of the phrase ''unless the District Engineer approves a compensation plan that the District Engineer determines is more beneficial to the environment than on-site minimization and avoidance measures'' which was in December 13, 1996, version of ''Section 404 Only'' Condition 4, from which General Condition 19 was derived. These commenters stated that the removal of this language conflicts with some recent statements by the Corps, including preferences for mitigation banks and in lieu fee programs. One commenter indicated that permittees should have options for providing compensatory mitigation, including the ability to utilize off-site compensatory mitigation (e.g., mitigation banks and in lieu fee programs) and out-of-kind compensatory mitigation (e.g., vegetated buffers next to open waters).

The modification of General Condition 19 does not conflict with our preference for using consolidated compensatory mitigation methods to offset losses of waters of the United States authorized by NWPs. General Condition 19 simply states that the district engineer will require, when necessary, the restoration, creation, enhancement, or preservation of aquatic resources to ensure that the adverse effects on the aquatic environment are minimal, individually and cumulatively. That compensatory mitigation can be provided by individual compensatory mitigation projects or consolidated mitigation methods, such as mitigation banks. District engineers have flexibility to determine the appropriate options for compensatory mitigation on a case-by-case basis. For activities authorized by NWPs, the selected compensatory mitigation method should be based on what is best for the aquatic environment and what is practicable for the permittee.

One commenter recommended modifying the vegetated buffer requirements in General Condition 19 to allow district engineers to waive these requirements if it is impractical for the permittee to establish and maintain vegetated buffers. Another commenter suggested that General Condition 19 should be modified to place more emphasis on on-site avoidance and minimization so that large scale mitigation such as vegetated buffers would be required only in exceptional circumstances. Two commenters said that the text of General Condition 19 should be rewritten to acknowledge that NWPs authorize activities that have minimal adverse effects on the aquatic environment and that most mitigation for NWP activities would consist of avoidance and small restoration projects, not the large scale mitigation that would result from establishing 50 to 125 foot wide vegetated buffers. One commenter stated that General Condition 19 does not contain specific requirements for maintaining and protecting vegetated buffers and asked how the maintenance of vegetated buffers will be guaranteed. One commenter objected to requiring vegetated buffers to be comprised of native species, because it would necessitate the removal of undesirable species in existing riparian buffers.

We have added the phrase ''to the maximum extent practicable'' to the

second sentence in paragraph (c) to clarify that vegetated buffers next to open waters can be required as compensatory mitigation only if such a requirement is practicable for the project proponent. District engineers will determine on a case-by-case basis whether vegetated buffers are necessary and the appropriate width of those vegetated buffers. Recommended widths of vegetated buffers are discussed in a previous section of this **Federal Register** notice. We have also added a provision to General Condition 19 that limits the proportion of compensatory mitigation that can be provided by vegetated buffers next to open waters. If compensatory mitigation for wetland impacts is necessary to ensure that an NWP activity results in minimal adverse effects on the aquatic environment and there are open waters on the project site, any vegetated buffer will comprise no more than 33% of the remaining compensatory mitigation acreage after the permanently filled wetlands have been replaced on a one-to-one acreage basis. Of course, many vegetated buffers will be wetlands and can be included as compensatory mitigation for wetland impacts.

Vegetated buffers are an alternate method of compensatory mitigation and should be protected in the same manner as wetland compensatory mitigation sites (i.e., through deed restrictions, conservation easements, or other appropriate legal means). The language of General Condition 19 does not require the removal of non-native plant species from the area where the vegetated buffer will be established and maintained. If the permittee is planting the vegetated buffer, he or she should use native plant species. Vegetated buffer zones that are already established with mature trees or shrubs can be maintained without removing those plants to replace them with native species. This general condition is adopted with the modifications discussed above.

20. Spawning Areas: In the July 21, 1999, **Federal Register** notice, we proposed to modify this general condition by adding the word ''important'' before the phrase ''spawning areas.'' The proposed modification would limit this general condition to spawning areas used by species harvested commercially for human consumption.

One commenter objected using the word ''important'' in this general condition, stating that it ignores the fact that commercially harvested fish species often rely on non-commercial species for survival . Two commenters said that this general condition should apply to all spawning areas. One commenter recommended expanding the scope of General Condition 20 to spawning areas of importance to recreational fisheries. One commenter suggested that the phrase ''important spawning areas'' should be replaced with ''spawning areas that support Federally-listed or special status fish.'' A commenter said that spawning areas that are important for state-listed endangered or threatened species or ecologically important fish species can be addressed through General Condition 25, Designated Critical Resource Waters. One commenter requested that the Corps provide a definition of the term ''substantial'' as it is used in the context of this general condition because many species of fish can tolerate high turbidity levels for short periods of time.

We maintain our position that the terms of this general condition should be limited to spawning areas used by species that are harvested commercially for human consumption. Division engineers can impose regional general conditions to restrict or prohibit activities in spawning areas used by other species. We cannot provide a definition of the word ''substantial'' as it is used in the context of this general condition because it is more appropriate to make this determination on a case-by-case basis, depending on the characteristics of the project site and the species that may be affected. This general condition is adopted as proposed.

21. Management of Water Flows: In the July 21, 1999, **Federal Register** notice, we proposed to modify this general condition to require permittees to maintain, to the maximum extent practicable, preconstruction surface water flow patterns.

Three commenters supported the proposed modification of General Condition 21. Several commenters objected to the proposed modification. One commenter suggested that the text of the proposed modification should be withdrawn and replaced with the original language of ''Section 404 Only'' Condition 6. A number of commenters stated that the Corps does not have the statutory authority to impose the requirements of this general condition. Two commenters indicated that the proposed modification of General Condition 21 is contrary to 33 CFR 320.4(m). One commenter said that best management practices should be required instead of this general condition. Numerous commenters stated that the requirements of General Condition 21 duplicate existing state or local programs. One commenter expressed concern that this general condition will impose requirements that are contrary to local standards or watershed plans. One commenter said that the requirements of this general condition will make the NWP program useless because all dredge and fill activities affect water flow.

We have statutory authority, through section 404 of the Clean Water Act, to impose General Condition 21 because this general condition is necessary to ensure that activities authorized by NWPs result in minimal adverse effects on the aquatic environment. Flooding and erosion that results from changes in surface water flows can have more than minimal adverse effects on the aquatic environment. The requirements of this general condition are not contrary to 33 CFR 320.4(m) because that section of the Corps regulations, which addresses the allocation of water supplies, is unrelated to the intent of General Condition 21.

District engineers can refer to best management practices to assist permittees in complying with this general condition, but we do not agree that best management practices are more efficient methods of achieving the objectives of General Condition 21. Although the requirements of this general condition may duplicate existing state or local programs, it is important to note that not all state and local governments address the management of water flows. Therefore, we believe that it is necessary to impose, on a nationwide basis, the requirements of General Condition 21 on activities authorized by NWPs. If the state or local government adequately addresses the management of surface water flows, the district engineer will defer to those agencies. However, if the state or local government does not adequately address the management of water flows, district engineers will determine if the proposed work complies with General Condition 21 and may impose special conditions on the NWP to ensure that the authorized work results in minimal adverse effects on surface water flows. If the activity is part of a larger system designed to manage water flows, then activity-specific management of water flows is not required. It is unlikely that this general condition will result in requirements that are contrary to watershed plans, because the intent of General Condition 21 is to ensure that activities authorized by NWPs result only in minimal adverse effects on the aquatic environment.

Although most discharges of dredged or fill material into waters of the United States authorized by NWPs alter surface water flow patterns, these changes are

usually minimal or could be mitigated to the minimal adverse effect level and would comply with General Condition 21. If more than minimal changes to surface water flows will occur as a result of the proposed work, the activity should be reviewed through the individual permit process or the activity should be modified with mitigation to comply with General Condition 21.

Two commenters objected to the proposed modification, stating it is too subjective. These commenters said that a lack of specific criteria will cause inconsistent and arbitrary implementation. These commenters requested specific criteria that will allow consistent determination of compliance. One commenter stated that the general condition should specify a storm event magnitude that will be used to determine compliance, because requiring no change in water flows for a 2-year storm event is different that requiring no change in water flows for a 100-year storm event. A commenter requested clarification whether the general condition addresses stream flow, overland flow, and/or stormwater flow. One commenter objected to the proposed modification of this general condition because it requires only qualitative analysis. Two commenters opposed the proposed modification of General Condition 21 because the Corps has not explained how compliance will be determined, specifically how pre-construction and post-construction water flows will be determined. One commenter recommended that the Corps adopt the guidelines at 23 CFR Part 650 (i.e., the Federal Highway Administration's regulations concerning bridges, structures, and hydraulics) to address floodplain encroachments and provide consistency for permit applicants.

We do not agree that specific criteria should be provided nationally, because of the large variability in hydrologic regimes and site conditions across the country. District engineers are better suited to establish local qualitative criteria to determine compliance with this general condition. As discussed in the July 21, 1999, **Federal Register** notice, this general condition applies to general surface water flow patterns over the course of a year, not to any particular storm event. The types of water flows subject to this general condition include both stream flows and overland flow. For example, this general condition prohibits the use of NWPs to authorize activities that will redirect substantial amounts of surface water to adjoining property owners and more than minimally increase the magnitude of flooding on their property.

To determine compliance with this general condition, district engineers will rely on their judgement and knowledge of local water flow patterns. District engineers will not require detailed hydrologic analyses or engineering studies.

Two commenters stated that requiring permittees to maintain, to the maximum extent practicable, surface water flows from the site is an impossible standard to meet, since such a requirement allows no change from pre-construction water flow conditions. Two commenters said that the phrase ''to the maximum extent practicable'' is an arbitrary threshold and will result in disputes between the Corps and project proponents with no mechanism for resolution.

The phrase ''to the maximum extent practicable'' provides flexibility for permittees to comply with the requirements of General Condition 21. This general condition does not establish a ''no effect'' requirement for compliance. It does not prohibit changes to surface water flows. General Condition 21 merely requires that the activity cause only minimal changes to surface water flows and maintain those flows so that they are similar, not necessarily identical, to preconstruction flow conditions. If changes to surface water flows will be more than minimal, the district engineer will either mitigate those impacts, or if that is not practicable, assert discretionary authority and require an individual permit.

Several commenters said that the analysis required to determine compliance with General Condition 21 is costly and burdensome on project proponents and is inappropriate for NWP activities. One commenter recommended that the text of this general condition include a statement requiring district engineers to defer to state and local agencies that have adequate requirements to manage water flows. A commenter suggested that General Condition 21 should be modified to provide greater flexibility for flood control and stormwater management activities, because this would allow permittees to demonstrate that changes in water flows comply with state or local flood control standards or benefit local hydrology or flow regimes. Another commenter recommended that activities authorized by NWPs should also be designed to allow the movement of aquatic organisms or require mitigation to maintain those movements.

Since district engineers will not require detailed hydrologic or engineering analyses, and must utilize qualitative analyses to determine whether or not a particular activity complies with this general condition, there will not be additional economic burdens on prospective permittees. Although district engineers should defer to state and local agencies if those agencies already impose adequate requirements for maintaining surface water flows, we do not agree that it is necessary to make this statement in the text of General Condition 21. We believe that the text of General Condition 21 provides adequate flexibility for flood control and stormwater management activities because it requires maintenance of surface water flows to the maximum extent practicable. In addition, this general condition does not prohibit the construction of facilities that impound water, such as retention or detention ponds, if the primary purpose of the project is to impound water. General Condition 4, Aquatic Life Movements, already addresses the issues raised by the last comment in the previous paragraph.

In the text of General Condition 21, we have changed the word ''project'' to ''activity'' to be consistent with the other general conditions, which refer to activities. This general condition is adopted with the modification discussed above.

23. Waterfowl Breeding Areas: In the July 21, 1999, **Federal Register** notice, we did not propose any changes to this general condition. One commenter recommended expanding this general condition to include all wetland-dependent migratory bird species.

We do not agree with this comment, because the intent of this general condition is to ensure that the NWPs do not authorize activities that result in more than minimal adverse effects to waterfowl, not all migratory bird species that may utilize wetlands. This general condition is retained without change.

24. Removal of Temporary Fills: In the July 21, 1999, **Federal Register** notice, we did not propose any changes to this general condition. One commenter requested clarification as to what constitutes a ''temporary'' fill by establishing time limits. Another commenter said that certain temporary fills, such as gravel, may be used by project proponents and left in stream beds to enhance habitat for spawning fish species. This commenter suggested that the Corps modify this general condition to allow temporary fills to remain in waters of the United States if those fills are for a permit requirement of any other regulatory agency.

District engineers will determine, on a case-by-case basis, what constitutes a temporary fill. Fills that are left in

waters of the United States as a condition of permit issued by another agency must also be authorized by Section 404 of the Clean Water Act (and Section 10 of the Rivers and Harbors Act if the fill is in navigable waters). These fills may be authorized by NWPs, regional general permits, or individual permits. This general condition is retained without change.

General Comments on Proposed General Conditions 25, 26, and 27: In the July 21, 1999, **Federal Register** notice, we proposed three new NWP general conditions that would limit the use of NWPs in designated critical resource waters, impaired waters, and waters of the United States within 100-year floodplains.

A number of commenters supported the three proposed NWP general conditions. Many commenters objected to the proposed general conditions, stating that there is no need for these restrictions. Several commenters opposed these three general conditions, because they duplicate other programs. Several commenters stated that the proposed general conditions will not provide any environmental benefits. Several commenters said that concerns for critical resource waters, impaired waters, and 100-year floodplains can be adequately addressed through the PCN process and the ability of district engineers to exercise discretionary authority on those activities that will result in more than minimal adverse effects on the aquatic environment. Other commenters stated that regional conditions would adequately address these issues.

After reviewing the comments addressing the three proposed NWP general conditions, we have decided to adopt proposed General Condition 25, Designated Critical Resource Waters, and proposed General Condition 27, Fills Within the 100-year Floodplain. We have decided to withdraw proposed General Condition 26, Impaired Waters. Proposed General Condition 27 has been substantially modified, as discussed below. This general condition has been designated as General Condition 26, Fills Within 100-year Floodplains. The new general conditions, in conjunction with the 1/2 acre limit for most of the new NWPs, will provide substantial environmental benefits. We do not agree that regional conditions are a better mechanism to address these issues, since the new general conditions address issues of national concern.

Several commenters said that the proposed new NWP general conditions will substantially reduce the regulated public's ability to efficiently obtain authorization for activities that have minimal adverse effects on the aquatic environment. Two of these commenters remarked that it will be more difficult to obtain authorization for maintenance activities. Several commenters stated that the proposed general conditions replace the ''minimal adverse effect'' criterion of the NWPs with a ''no effect'' criterion. Numerous commenters asserted that the assumption that activities in designated critical resource waters, impaired waters, and 100-year floodplains will result in more than minimal adverse effects on the aquatic environment is incorrect. These commenters said that many activities authorized by NWPs in these areas may actually improve water quality or provide essential public health and safety functions.

The two new NWP general conditions will not make it more difficult to obtain authorization for maintenance activities. Many maintenance activities are eligible for the Section 404(f) exemptions. NWP 3 activities in designated critical resource waters require notification to the district engineer but may be authorized. General Condition 26 does not restrict NWP 3 or NWP 31 activities in 100-year floodplains. The intent of the new general conditions is to ensure that the NWPs comply with the statutory requirements of Section 404(e) of the Clean Water Act. Although these conditions will limit the use of NWPs in certain waters, activities in these waters may be authorized by other forms of DA permits, such as regional general permits or standard permits.

One commenter stated that the proposed general conditions are contrary to the Corps goal of focusing its limited resources on those activities with the potential for greater environmental impacts. Two commenters said that without additional resources to implement and enforce the three proposed general conditions, there will be a decrease in environmental protection. One of these commenters said that these general conditions are too confusing and difficult to enforce. Two commenters objected to these general conditions because they substantially reduce the geographic area in which the NWPs can be used. One commenter stated that the proposed general conditions improperly change the focus of the NWPs from the type of activity to the location of the activity. Another commenter said that the proposed general conditions are confusing because of specific inconsistencies, such as the imposition of an acreage limit in proposed General Condition 26 without similar acreage limits in proposed General Conditions 25 and 27 or the different applicability of these general conditions for specific NWPs. For example, NWP 39 cannot be used in the 100-year floodplain but it can be used to authorize discharges of fill material into impaired waters and adjacent wetlands.

We agree that the proposed general conditions may have resulted in a decrease in environmental protection. However, the changes we have made will ensure that the conditions will substantially increase protection of the aquatic environment. General Condition 25 restricts the use of NWPs in high value waters, which is analogous to the increased emphasis on regional conditioning we placed on the proposed new and modified NWPs. General Condition 26 will minimize adverse effects to the flood-holding capacity of 100-year floodplains, as well as enhance protection of free-flowing streams in the regulated floodway. Although the two new NWP general conditions reduce the geographic scope of the NWPs, these conditions are necessary to ensure that the NWPs do not authorize activities with more than minimal adverse effects on the aquatic environment. The location of a waterbody or wetland has a substantial influence on the functions and values it provides. For example, a wetland within a 100-year floodplain may provide fish spawning habitat that is not provided by an isolated wetland. The differences in the requirements between the two general conditions are necessary because each of these conditions addresses different issues. Therefore, each of the new NWP general conditions requires different restrictions or limitations to ensure that the NWPs authorize activities with minimal adverse effects on the aquatic environment.

25. Designated Critical Resource Waters: In the July 21, 1999, **Federal Register** notice, we proposed a new general condition that would limit the use of certain NWPs in designated critical resource waters.

Many commenters expressed their support for the proposed general condition. A number of commenters opposed this general condition. One commenter said that General Condition 25 will severely restrict the NWP program and make it unusable. Some commenters stated that NWPs should not authorize activities in designated critical resource waters.

Numerous commenters said the proposed general condition is based on an invalid assumption that all discharges of dredged or fill material into designated critical resource waters will always jeopardize any essential functions that make these waters high value. These commenters stated that

this assumption is invalid because the NWPs authorize activities with minimal adverse effects on the aquatic environment. One commenter said that this general condition imposes a ''no effect'' standard instead of a ''minimal effect'' standard. Many commenters suggested that protection of designated critical resource waters is more effectively provided through regional conditions imposed by division engineers and the PCN process. The PCN process allows district engineers to add special conditions to NWP authorizations or exercise discretionary authority to require individual permits for activities that result in more than minimal adverse effects on the aquatic environment.

General Condition 25 does not prohibit the use of all NWPs in designated critical resource waters or adjacent wetlands. Only those NWP activities that are likely to result in more than minimal adverse effects on designated critical resource waters are restricted by General Condition 25. Although regional conditions and the PCN process may have fully protected designated critical resource waters, we believe that for the waters listed nationwide restrictions are appropriate. We believe that a national condition is necessary for certain categories of waters.

One commenter said that NOAA-designated marine sanctuaries should be subject to the same restrictions that General Condition 7 imposes on activities in Wild and Scenic Rivers. This commenter stated that the use of NWPs should be allowed if those activities are approved by the agency managing those sanctuaries. This commenter also said that National Estuarine Research Reserves do not require extra protection through General Condition 25 because they are already protected by coastal states and NOAA.

We do not agree that NOAA-designated marine sanctuaries should be subject to the same restrictions as Wild and Scenic Rivers. We believe that the listed NWPs would likely result in more than minimal adverse effects to these important waters. We believe that restricting the use of certain NWPs in National Estuarine Research Reserves is necessary.

Many commenters stated that existing General Condition 7 provides adequate protection for Wild and Scenic Rivers, and recommended the removal of Wild and Scenic Rivers from the list of designated critical resource waters in General Condition 25. Several commenters opposed the inclusion of critical habitat for Federally-listed endangered or threatened species as designated critical resource waters, stating that General Condition 11 already provides sufficient protection for these areas. Numerous commenters objected to the provision in General Condition 25 that requires concurrence from the U.S. FWS or NMFS that the proposed work complies with General Condition 11. One of these commenters said that this provision is contrary to the Endangered Species Act (ESA), which requires consultation only for those activities that adversely affect Federally-listed endangered or threatened species or their critical habitat. Two commenters indicated that this provision inappropriately shifts the responsibility for determining effects on endangered or threatened species from the Corps to the U.S. FWS or NMFS. One commenter said that this provision is not strong enough.

General Condition 25 merely states that activities involving discharges of dredged or fill material into Wild and Scenic Rivers must comply with General Condition 7. This general condition does not impose any additional restrictions on NWP activities in Wild and Scenic Rivers. We believe that the provisions concerning designated critical habitat for Federally-listed endangered or threatened species in General Condition 25 are necessary to ensure compliance with ESA. Moreover, we believe that designated critical habitat deserves the highest level of protection, thus for the NWPs listed, we will seek the concurrence of the FWS to ensure protection.

One commenter recommended the removal of state natural heritage sites from the list of designated critical resource waters. Another commenter said that General Condition 25 will prohibit the use of many NWPs in certain counties, since some state natural heritage sites encompass entire counties. One commenter requested clarification as to what constitutes a ''state natural heritage site.''

We are maintaining state natural heritage sites in the list of designated critical resource waters because these areas typically contain high value waters. A state natural heritage site has been designated, through a state legislative or regulatory process, as an area that warrants additional protection due to its natural resource characteristics. Therefore, we believe that authorizing projects under NWPs would likely result in more than minimal adverse effects on the aquatic environment.

One commenter objected to including outstanding national resource waters in the list of designated critical resource waters. This commenter said that this general condition should be limited to waters that are defined by Federal standards, not state standards, because there is a need for consistency across state boundaries. Two commenters said that outstanding national resource waters already receive special protection from states through an existing program. These commenters cited EPA's regulations at 40 CFR 131.12(a)(3). Three commenters supported the requirement for the legislature or governor to designate waters with particular environmental or ecological significance. Three commenters said that other state or local officials should be able to designate waters with environmental or ecological significance that should be subject to this general condition.

We believe that outstanding national resource waters should be subject to the provisions of General Condition 25, because these waters are typically high value waters. We maintain our position that outstanding national resource waters must be officially designated by the state as having particular environmental or ecological significance. To be subject to General Condition 25, those outstanding national resource waters must be identified and approved by the district engineer after public notice and opportunity for comment. We do not agree that state or local officials should be able to designate additional waters that will be subject to General Condition 25, without the district engineer providing an opportunity for public notice and comment.

Three commenters supported allowing district engineers to include additional waters after public notice and opportunity for comment. Several commenters opposed this mechanism, because it would provide no additional protection since these waters are already protected by state and local governments. Two commenters indicated that waters identified by Federal and state agencies as designated critical resource waters should be subject to a public review process. Two commenters stated that the use of the word ''include'' in the first sentence of General Condition 25 implies that there are other waters that are considered to be designated critical resource waters and subject to this general condition. A commenter requested clarification as to what constitutes an official designation as having particular environmental or ecological significance. This commenter said that public notice at the district level should be adequate to make this designation.

We have modified General Condition 25 to explicitly state that district

engineers can designate additional critical resource waters after notice and opportunity for public comment. This process is similar to the NWP regional conditioning process whereby district engineers would identify high value waters that should be subject to NWP restrictions. Waters having particular environmental or ecological significance should be designated by the governor or legislature, and the district engineer can designate these waters as critical resource waters for the purposes of General Condition 25, after public notice and opportunity for comment. In contrast to the regional conditioning process, the district engineer would approve any additional critical resource waters for the purposes of General Condition 25.

One commenter asked why wetlands adjacent to designated critical resource waters are included in General Condition 25. Several commenters recommended that the Corps replace the word ''adjacent'' with ''contiguous'' to clarify the geographic scope of this general condition and make it easier to implement. One commenter stated that adjacent wetlands are not clearly defined for the purposes of this general condition. Another commenter remarked that waters adjacent to designated critical habitat are not subject to the same ESA requirements as designated critical habitat and should not be treated as such.

Wetlands adjacent to designated critical resource waters are included in General Condition 25 because these wetlands can have substantial influences on the quality of these waters. We believe that this is true for all critical resource waters, including designated critical habitat for endangered species. For the purposes of this general condition, the definition term ''adjacent'' is the same as the definition at 33 CFR 328.3(c).

Several commenters requested that the Corps define what constitutes an ''effect'' to a designated critical resource water. Two commenters indicated that it is difficult for the public to know which waters are subject to General Condition 25 because that information is not readily available and the list of applicable waters can change frequently. Several commenters suggested that the Corps produce maps of designated critical resource waters and subject those maps to a public comment process.

For the purpose of General Condition 25, the term ''directly affecting'' refers to activities involving discharges of dredged or fill material into waters of the United States. Prospective permittees should contact the appropriate Corps district to determine if any designated critical resource waters occur in the vicinity of the proposed work. Corps districts can produce maps of designated critical resource waters to aid in the implementation of this general condition, but such maps are not required.

Several commenters said that states can restrict the use of NWPs in certain waterbodies through the Section 401 water quality certification process and that state-designated waters should not be subject to General Condition 25. Another commenter stated that the Corps should not restrict discharges into designated critical resource waters if other Federal or state agencies have not imposed restrictions on those waters.

We believe that the provisions in General Condition 25 are necessary to ensure that the NWPs only authorize activities with minimal adverse effects on the aquatic environment, individually or cumulatively. Other Federal and state agencies may not have the regulatory authority to restrict or prohibit discharges of dredged or fill material into designated critical resource waters. Therefore, it is appropriate for the Corps to impose such restrictions, since such discharges are regulated by the Corps under Section 404 of the Clean Water Act.

One commenter recommended adding NWP 13 to the list of NWPs that are prohibited in this general condition. Another commenter suggested that NWP 8 should be added to the list of NWPs that cannot be used in designated critical resource waters. Many commenters objected to the inclusion of maintenance activities (*e.g.*, NWPs 3 and 31) in General Condition 25 because these activities have minimal adverse effects on the aquatic environment and delaying the authorization of these activities is unsafe and contrary to the public interest. Some commenters suggested removing NWPs 7 and 43 from the list of prohibited activities. Many commenters said that NWPs 12 and 14 should not be restricted in these waters. Some of these commenters stated that submission of a PCN to the district engineer is adequate to ensure that the work results in minimal adverse effects on the aquatic environment. Two commenters said that NWP 25 should not be subject to this general condition. A commenter stated that NWP 35 should be included in the list of NWPs that require notification. This commenter also indicated that it is unnecessary to require a PCN for activities authorized by NWPs 22, 27, 30, and 37.

We do not agree that NWPs 13 or 8 should be added to the list of NWPs in paragraph (a) of General Condition 25. NWP 3 activities can occur in designated critical resource waters, provided those activities result in minimal adverse effects on the aquatic environment. The maintenance of flood control facilities constructed in designated critical resource waters could result in more than minimal adverse effects on the aquatic environment, and should be reviewed through other DA permit processes. We continue to believe that NWPs 7, 12, 14, 35, and 43 should be subject to the restrictions in paragraph (a). We do not agree that the PCN process is a more effective mechanism to review activities in designated critical resource waters. We believe that the activities authorized by NWPs 22, 25, 27, 30, and 37, should be reviewed on a case-by-case basis if they are located in designated critical resource waters or adjacent wetlands.

Many commenters suggested additional waters that should be included in the list of designated critical resource waters. Numerous commenters recommended groundwater recharge areas and sources of drinking water as designated critical resource waters. Other suggested waters include: primary nursery areas and shellfish waters; streams that support cold water fisheries; areas used by migratory birds; waters of the United States in wilderness areas, national parks, and wildlife refuges; areas identified by state natural heritage programs as supporting high concentrations of rare species; vernal pools; stream segments and waterbodies proposed for listing under section 303(d) of the Clean Water Act; waters supporting salmonid fisheries; and wetlands that are rare and difficult to replace, such as peatlands, potholes, vernal marshes, playas, kettles, high altitude wetlands, and mature forested wetlands.

Concerns regarding these waters are more effectively addressed through other processes, such as regional conditioning of the NWPs or case-specific review of PCNs. Division engineers can regionally condition the NWPs to prohibit or limit their use in such high value waters. District engineers will exercise discretionary authority and require individual permits if activities proposed in designated critical resource waters will result in more than minimal adverse effects on the aquatic environment. Proposed General Condition 25 is adopted with the modifications discussed above.

26. Impaired Waters: In the July 21, 1999, **Federal Register** notice, we proposed a new general condition that

would limit the use of NWPs in waterbodies that are identified as impaired through the Clean Water Act Section 303(d) process. The sources of impairment considered for the proposed general condition were: nutrients, organic enrichment resulting in low dissolved oxygen concentration in the water column, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, turbidity, or the loss of wetlands. The proposed limitation would also apply to wetlands adjacent to the impaired waterbody.

Many commenters supported the proposed General Condition 26 and many commenters opposed this proposed general condition. Numerous commenters said that the NWPs should not authorize activities in impaired waterbodies. A large number of commenters supported the identification of impaired waters through the Clean Water Act Section 303(d) process. One commenter supported the exclusion of NWP 3 from the 1 acre limit imposed by General Condition 26. Two commenters stated that the limitations in this general condition should apply to all wetlands in the watershed or sub-basin, not only to those wetlands that are adjacent to the impaired waters.

Those commenters that expressed opposition to the proposed general condition stated that the limitations in General Condition 26 are unnecessary and would provide no benefits for the environment. Many commenters objected to the proposed general condition because they believe that activities in waters of the United States may have no effect on the actual cause of impairment. Numerous commenters objected to the presumption in proposed General Condition 26 that NWP activities would result in further impairment of waterbodies. Some commenters indicated that certain NWP activities improve water quality. For example, these commenters said that NWPs can authorize activities that stabilize eroding stream banks, improve fish passage, improve the quality of highway runoff, or decrease peak flows. Several commenters believe that the Corps lacks the legal authority to impose this general condition. One commenter said that General Condition 26 is unnecessary because the quality of waters is improving. Several commenters stated that the limitations of General Condition 26 place more value on impaired waters than unimpaired waters. Two commenters indicated that the requirements of this general condition make permittees responsible for mitigating impacts to water quality that they did not cause.

Many commenters recommended using the PCN process and discretionary authority to address impacts to impaired waters, instead of utilizing a prohibition. A number of commenters said that the NWPs should be used to authorize discharges of dredged or fill material into impaired waters and adjacent wetlands if the adverse effects on the aquatic environment are minimal. Two commenters stated that the criterion of ''no further impairment'' imposes a ''no adverse effect'' standard on the NWPs, not a ''minimal adverse effect'' standard. Several commenters said that the limitations imposed by proposed General Condition 26 offset the utility of regional conditions. A number of commenters objected to the 1 acre limit imposed by the proposed general condition. Two commenters said that the 1 acre limit is arbitrary and violates the Administrative Procedures Act because the Corps provided no justification that this limit is necessary. One commenter stated that the acreage limit should be in the text of the NWPs, not the general condition.

A large number of commenters objected to this proposed general condition because it is duplicative of existing programs, such as the Section 401 water quality certification or National Pollutant Discharge Elimination System programs. Two commenters stated that the issuance of a water quality certification by the state or Tribe should be adequate to ensure that the use of the NWP is consistent with water quality standards. Several commenters asserted that states are best suited to determine which actions are necessary to address causes of impairment, allocate pollutant loads, and protect water quality, and that the Corps should defer these matters to the states. Two commenters said that the proposed general condition is redundant with General Condition 9.

Several commenters objected to the use of Clean Water Act Section 303(d) lists to identify impaired waters. A commenter objected to the provisions of proposed General Condition 26 because EPA is currently proposing to revise its regulations for the Total Maximum Daily Load (TMDL) program, upon which the limitations of the proposed general condition are based. This commenter also opposed the proposed general condition because state Section 303(d) lists are constantly changing and not all state lists are available at the same time. One commenter requested clarification whether the TMDL program is the same as the Section 303(d) program for identifying impaired waters. Another commenter asked how the Corps will be able to enforce this general condition when water quality standards may vary from year to year and the Section 303(d) status of individual stream segments may change. Two commenters objected to the proposed general condition because of the subjective criteria used to identified impaired waters on 303(d) lists.

Several commenters objected to making the prospective permittee responsible for demonstrating that the proposed work will not result in further impairment of the waterbody. Many commenters opposed this general condition because it does not explain how the prospective permittee can rebut the presumption and what information is needed to make the rebuttal. Several commenters indicated that, in many cases, it will be impossible to rebut the presumption in General Condition 26 and in other cases much time and money would be required to rebut the presumption. One commenter suggested that the prospective permittee should be required to provide documentation to the district engineer instead of demonstrating that the activity will not result in further impairment of the waterbody.

Several commenters asserted that permittees should be allowed to use compensatory mitigation to ensure that the authorized work will not result in further impairment of the waterbody. Two commenters said that the prohibition against using compensatory mitigation to ensure no further impairment of the waterbody is contrary to General Condition 19 and the last sentence of paragraph (b) of the proposed General Condition. One commenter requested clarification whether the term ''excluding mitigation'' refers to compensatory mitigation. This commenter also asked if avoidance and minimization could be used as documentation that the activity will not cause further impairment of the waterbody.

Three commenters asked if tributaries of impaired waters are also considered impaired and subject to proposed General Condition 26. Several commenters requested clarification whether wetlands adjacent to an impaired waterbody are considered part of that waterbody and subject to the 1 acre limit. One commenter questioned whether the proposed general condition is applied on a watershed or stream reach basis.

Several commenters objected to the inclusion of adjacent wetlands in proposed General Condition 26 because the definition of adjacency is too vague and those wetlands may not have direct hydrologic connections to the waterbody. Three commenters requested

a definition of the term ''adjacent'' as it applies to this general condition. Two commenters said that the general condition should be limited to the impaired waterbody and wetlands with demonstrable hydrologic connections to the impaired waterbody. One commenter recommended that the Corps replace the term ''adjacent'' with ''contiguous'' in this general condition. This commenter also said that, for the purposes of this general condition, adjacent wetlands should not include wetlands downstream of the impaired waterbody. Another commenter said that identifying adjacent wetlands is problematic since impaired waters are identified by segments. This commenter requested guidance on how to identify wetlands that are adjacent to impaired stream segments.

Two commenters said that this general condition should be included in General Condition 25 because impaired waters warrant the same protection as designated critical resource waters. Another commenter said that proposed General Condition 26 should not apply to waters where TMDL water quality management plans have been implemented. Two commenters said that this general condition should not apply to activities that do not result in discharges of the listed pollutant.

One commenter requested clarification whether proposed General Condition 26 applies only to waterbodies that are impaired as a result of the causes listed in the text of the proposed general condition or if other sources of impairment are applicable. Two commenters said that the proposed general condition should apply only to waterbodies that are impaired as a result of the loss of wetlands. Many commenters recommended additional criteria to identify waters that should be subject to this general condition. Suggested criteria include: (1) watersheds that have lost more than 50% of their original wetlands; (2) loss of riparian vegetation that results in greater fluctuations in water temperature; (3) waters identified as impaired through EPA's Index of Watershed Indicators; (4) all waters identified as impaired through the Section 303(d) process; (5) pollutants listed in section 502(6) of the Clean Water Act; (6) waters impaired by hydrological and habitat modification; and (7) waters impaired by pesticides and pathogens.

A number of commenters suggested specific NWPs that should not be subject to proposed General Condition 26. Many commenters said that NWP 3 activities should not be subject to the proposed general condition, because it would result in delays for maintenance activities that have minimal adverse effects on the aquatic environment and are not likely to result in further impairment of these waterbodies. One commenter stated that NWP activities that enhance or restore waters, are necessary for public health and safety, or authorize maintenance activities, should not be subject to the proposed general condition. Various commenters recommended that NWPs 12, 13, 14, 31, and 33 should not be subject to proposed General Condition 26. One commenter said that the proposed general condition should not apply to NWPs 3, 13, 27, 41, 42, and 43 because the activities authorized by these NWPs usually improve water quality. Most NWPs were recommended for exclusion from the proposed general condition.

After considering the comments received in response to the July 21, 1999, **Federal Register** notice, we determined that General Condition 26 should be withdrawn. We believe that the 1/2 acre limit and the 1/10 acre PCN limit on the new and modified NWPs will ensure that the adverse effects are no more than minimal. We also agree with the commenters who stated that the limitation would yield limited, if any, value added for the aquatic environment. We agree that in many cases mitigated NWPs will actually improve the status of the aquatic environment. Finally, we believe that impacts to impaired waters are more appropriately addressed through the Section 401 water quality certification process.

27. Fills Within 100-year Floodplains: We proposed, in the July 21, 1999, **Federal Register** notice, to add a new general condition to the NWPs that would limit the use of certain NWPs in waters of the United States within all 100-year floodplains.

We received many comments supporting or opposing proposed General Condition 27. A large number of commenters said that this general condition should include drainage activities in 100-year floodplains. Several commenters recommended expanding the scope of the proposed general condition to include excavation activities in 100-year floodplains. Many commenters stated that the proposed general condition should be expanded to prohibit all fills in 100-year floodplains. Some commenters expressed concern that the proposed general condition does not address increases in flooding caused by stream channelization activities. One commenter supported proposed General Condition 27 because it will provide protection of essential fish habitat and anadromous fish species.

Many commenters opposed proposed General Condition 27, stating that it would provide few benefits and that it will increase delays and costs for the regulated public. A number of commenters contend that the requirements of the proposed general condition are outside of the scope of the Corps regulatory authority. Many commenters stated that the requirements of proposed General Condition 27 imply that the Corps is expanding its regulatory authority to the entire 100-year floodplain. Several commenters objected to the provisions of this general condition because it duplicates the requirements of other government agencies, especially state and local flood protection regulations and ordinances, as well as the National Flood Insurance Program (NFIP) of the Federal Emergency Management Agency (FEMA). One commenter said that General Condition 27 is contrary to the Administration's initiatives that encourage reuse of brownfields, because most brownfields are located within 100-year floodplains in urban areas.

As a result of our review of the comments received in response to the July 21, 1999, **Federal Register** notice, we have modified proposed General Condition 27 and designated it as General Condition 26, Fills Within 100-year Floodplains. The revised general condition prohibits the use of NWPs 29, 39, 40, 42, 43, and 44 to authorize discharges of dredged or fill material into waters of the United States that result in permanent, above-grade fills within the FEMA-mapped 100-year floodplain of streams below the headwaters. NWPs 12 and 14 can be used to authorize discharges of dredged or fill material resulting in permanent, above-grade fills within the 100-year floodplain of streams below headwaters, provided the permittee notifies the district engineer in accordance with General Condition 13 and the activity complies with FEMA or FEMA-approved local floodplain construction requirements.

In flood fringes of FEMA-mapped 100-year floodplains located within headwater streams, NWPs 12, 14, 29, 39, 40, 42, 43, and 44 can be used to authorize permanent, above grade fills in waters of the United States, provided the prospective permittee notifies the district engineer in accordance with General Condition 13 and provides documentation demonstrating that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. In FEMA-designated floodways of 100-year

floodplains located within headwater streams, NWPs 29, 39, 40, 42, 43, and 44 cannot be used to authorize permanent, above-grade fills in waters of the United States. However, NWPs 12 and 14 can be used to authorize permanent, above-grade fills in waters of the United States within floodways of FEMA-designated 100-year floodplains located within headwater streams, provided the prospective permittee notifies the district engineer in accordance with General Condition 13 and provides documentation demonstrating that the activity complies with FEMA or FEMA-approved local floodplain construction requirements. We believe that these changes, combined with the 1/2 acre maximum acreage limit and 1/10 acre PCN threshold, will ensure protection of the functions and values of floodplains. Definitions of the terms ''flood fringe'' and ''floodway'' are found at 44 CFR 9.4.

We do not agree that this general condition should be extended to drainage and excavation activities within 100-year floodplains, since these activities do not have substantial adverse effects on the flood-holding capacity of 100-year floodplains. Stream channelization activities authorized by NWPs are subject to General Condition 21, which prohibits substantial changes to surface water flow patterns, including downstream flooding. Stream channelization projects are constructed to improve conveyance of water, which may decrease local flooding.

It is important to note that the requirements of this general condition are not a surrogate for the requisite and separate determination by the Corps of minimal adverse effects on the aquatic environment that is required for all NWPs. District engineers will exercise discretionary authority if proposed discharges of dredged or fill material into waters of the United States within 100-year floodplains will result in more than minimal adverse effects (after consideration of mitigation measures) on the aquatic environment.

We do not believe that the modified version of this general condition will unreasonably increase costs for the regulated public. NWP 26 authorized only discharges of dredged or fill material in headwaters and isolated waters and the modified condition allows the use of NWPs in the flood fringe of the headwaters. The Corps study of the economic and workload implications of the proposed NWPs indicates that the revised approach will cost the regulated public roughly one-half the amount the proposal in the July 21, 1999, **Federal Register** would cost. Moreover, we believe that the modifications we have made will actually enhance protection of the aquatic environment. To participate in the NFIP, the permittee must comply with FEMA or FEMA-approved local floodplain construction requirements, which will not impose additional costs. The requirements of this general condition are not an attempt to, and do not, expand the Corps regulatory jurisdiction to areas outside of waters of the United States.

Two commenters stated that the current NWP program complies with Executive Order (E.O.) 11988, Floodplain Management. One of these commenters said that requiring individual permits for the activities prohibited by the proposed general condition is not considered a practicable alternative in the context of E.O. 11988, because it is impractical to require individual permits for all activities in 100-year floodplains.

We concur that the NWP program fully complies with E.O. 11988, including the ''Floodplain Management Guidelines for Implementing E.O. 11988'' issued by the U.S. Water Resources Council and ''Further Advice on Executive Order 11988 Floodplain Management'' issued by the Interagency Task Force on Floodplain Management. ''Further Advice on Executive Order 11988 Floodplain Management'' states that class review of repetitive actions proposed in 100-year floodplains can be conducted in full compliance with E.O. 11988. The NWPs clearly fall within the category of class review of repetitive actions.

Several commenters indicated that requiring individual permits for activities in 100-year floodplains will not provide any benefits because individual permits will be issued with little or no change from the proposed work. These commenters said that it is likely that the Corps will rely on the NFIP standards when assessing impacts on 100-year floodplains. Two commenters said that the requirements of proposed General Condition 27 will remove incentives for project proponents to design their activities to have minimal adverse effects to qualify for NWP authorization. These commenters believe that project proponents will design larger activities with greater environmental impacts when required to request individual permits. One commenter said that the NWPs should authorize fills that result in the loss of less than 2 acres of waters of the United States in 100-year floodplains.

Several commenters stated that the requirements of proposed General Condition 27 should not be more restrictive than FEMA regulations. Numerous commenters indicated that the proposed general condition is contrary to FEMA regulations, which allow fills in the flood fringe of 100-year floodplains. One commenter said that the proposed general condition should be modified to allow the NWPs to authorize activities that comply with NFIP construction standards. One commenter said that proposed General Condition 27 should not apply in areas with FEMA-certified floodplain management programs in place, where the activity has been approved by the local floodplain management agency.

We agree with these comments and have modified this general condition so that the NWPs can be used to authorize activities within flood fringes of 100-year floodplains within headwater streams, provided those activities comply with FEMA or FEMA-approved local floodplain construction requirements and result in minimal adverse effects on the aquatic environment. We do not agree that there should be a 2 acre limit for discharges of dredged or fill material into waters of the United States within 100-year floodplains. The 1/2 acre limit for most of the new NWPs will allow the NWP program to continue to provide a streamlined authorization process for activities with minimal adverse effects on the aquatic environment.

A large number of commenters stated that proposed General Condition 27 will impose additional requirements on local floodplain authorities that will increase their workload. For example, the proposed general condition required local floodplain authorities to determine the extent of 100-year floodplains, determine whether a proposed activity is outside of the 100-year floodplain, and provide documentation that the proposed work will not decrease the flood-holding capacity of the 100-year floodplain.

We agree with these concerns, but believe that the revised general condition will not impose such additional workload requirements on local floodplain authorities.

Many commenters contend that the prohibitions in proposed General Condition 27 are not necessary because the NWPs authorize only activities with minimal adverse effects on the aquatic environment, including floodplains. Several commenters noted that the terms of proposed General Condition 27 impose a ''no effect'' standard on the NWPs instead of a ''minimal adverse effect'' standard.

We agree with these comments. The revised general condition does not

prohibit the use of NWPs 29, 39, 40, 42, 43, and 44 to authorize discharges of dredged or fill material into waters of the United States within flood fringes of 100-year floodplains within headwater streams, provided the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements and results in minimal adverse effects on the aquatic environment. NWPs 12 and 14 can be used to authorize activities in all non-tidal 100-year floodplains, provided those activities comply with FEMA or FEMA-approved local floodplain construction requirements and result in minimal adverse effects on the aquatic environment.

Numerous commenters objected to this general condition because it requires PCNs for all activities. Two commenters requested clarification whether notification to the district engineer is required if the FEMA map or local floodplain map shows that the project site is outside of the 100-year floodplain. Three commenters asked if the PCN requirement in paragraph (a) of the proposed general condition is for all NWPs or only NWPs 21, 29, 39, 40, 42, 43, and 44.

The revised general condition does not require notification for all activities authorized by NWPs 12, 14, 29, 39, 40, 42, 43, and 44. Notification is required only if the proposed activity involves discharges of dredged or fill material into waters of the United States within 100-year floodplains that are mapped through Flood Insurance Rate Maps (FIRMs) published by FEMA or FEMA-approved local floodplain maps.

Numerous commenters said that compensatory mitigation can be used to offset losses of floodplain functions and values, including flood storage, and that the prohibitions in proposed General Condition 27 are unnecessary. Several commenters remarked that floodplain issues are more appropriately addressed through regional conditions. Other commenters suggested that PCNs and discretionary authority should be used instead of prohibitions. Two commenters recommended that the Corps include local floodplain agencies in the agency coordination process to address floodplain concerns.

Compensatory mitigation can be used to ensure that the proposed work complies with FEMA or FEMA-approved local floodplain construction requirements. Since flood hazards are a national concern, we do not agree that this issue should be addressed solely by regional conditions. Certain NWP activities within 100-year floodplains will be reviewed through the PCN process to ensure that those activities comply with FEMA or FEMA-approved local floodplain construction requirements and result in minimal adverse effects on the aquatic environment. In addition, we believe that the waters of the United States within the mapped floodway have inherently higher wetland functions and values, which should be afforded additional protections.

Several commenters said that proposed General Condition 27 is unnecessary because the proposed modification of General Condition 21 adequately addresses changes to surface water flows, including flooding. Three commenters requested clarification whether runoff from buildings constructed in uplands within 100-year floodplains requires a Section 404 permit. Three commenters asked whether permanent, above-grade fills in uplands within 100-year floodplains are subject to proposed General Condition 27.

We do not agree that General Condition 21 adequately addresses all potential adverse effects to 100-year floodplains. Stormwater runoff from buildings constructed in uplands within 100-year floodplains does not require a Section 404 permit. During reviews of PCNs, district engineers will consider the adverse effects of the proposed activity on the ecological as well as flooding functions and values of 100-year floodplains. Depending on the Corps scope of analysis for the proposed work, district engineers will generally limit their reviews to activities in waters of the United States within 100-year floodplains.

Many commenters addressed problems associated with identifying and mapping 100-year floodplains. One commenter supported the requirement for using up-to-date FEMA maps. Several commenters advocated expanding proposed General Condition 27 to 100-year floodplains not mapped by FEMA on its FIRMs. A large number of commenters indicated that FEMA maps are not accurate and should not be relied upon to identify the extent of 100-year floodplains. Two commenters said that the Corps should map the floodplains. One commenter noted that many FEMA maps do not reflect changes in land use that have occurred since the last FIRM was issued, which makes these maps unreliable.

To effectively implement the requirements of this general condition, and to be consistent with other Federal programs, 100-year floodplains will be identified through the latest FIRMs published by FEMA or FEMA-approved local floodplain maps. If there are no FIRMs or FEMA-approved local floodplain maps available for the area where the proposed work is located, then the requirements of this general condition do not apply. In such cases, the Corps will still consider the impacts of proposed projects through the PCN review process.

Many commenters stated that in areas where there are no FEMA maps or those maps are out of date, local floodplain authorities may be unwilling to certify the extent of the 100-year floodplain without extensive analyses. These commenters said that landowners may have to go through a lengthy and expensive map revision process before the local floodplain authority will provide the documentation required by proposed General Condition 27. Two commenters remarked that the requirement to have a licensed professional engineer certify whether or not the activity is in the 100-year floodplain is too restrictive. These commenters said that this requirement should be modified to allow qualified hydrologists to identify 100-year floodplains in areas not mapped by FIRMs. Several commenters suggested that proposed General Condition 27 should contain a statement requiring the consideration of man-made flood control structures when mapping 100-year floodplains.

The revised general condition does not require local floodplain authorities to certify the extent of 100-year floodplains. In addition, the prospective permittee is not required to have a licensed professional engineer certify whether or not the proposed work is within a 100-year floodplain.

One commenter objected to using FEMA maps, stating that the scale of these maps makes it difficult to determine if a particular parcel is within a 100-year floodplain. Another commenter objected to using FIRMs because they may contain large areas that are within the 100-year floodplain but are not mapped because of inadequate funding. These unmapped areas would place burdens on local governments or the landowners, who would be required to survey the property and map the 100-year floodplain. One commenter objected to proposed General Condition 27, because it would require project proponents to obtain individual permits if they cannot demonstrate that the proposed work is located outside of 100-year floodplains because there are no FEMA or local floodplain maps available for the project sites.

We believe that FIRMs or FEMA-approved local floodplain maps are adequate for the purposes of this general condition. Utilizing existing FIRMs and

FEMA-approved local floodplain maps eliminates the additional burdens on local governments or landowners that existed in the proposed condition. If there are no FIRMs or FEMA-approved local floodplain maps available for the project area, this general condition does not apply.

Several commenters stated that paragraph (b) of proposed General Condition 27 is an illegal delegation of the Corps regulatory authority because it allows FEMA or local floodplain authorities to prohibit the use of NWPs 12 and 14 in 100-year floodplains. Two commenters disapprove of the requirement for prospective permittees to provide, with the notification, a statement from FEMA or the local flood control agency that the proposed work will not increase flooding. One commenter objected to the provisions of paragraph (b) because FEMA regulations require engineering analyses only for work in regulatory floodways. Two commenters recommended modifying paragraph (b) to allow professional engineers to provide documentation to district engineers without submitting it to FEMA or local floodplain authorities for approval.

We have revised this general condition to require the permittee to comply with the appropriate FEMA or FEMA-approved local floodplain construction requirements. These requirements address impacts to base flood elevations and 100-year floodplains to minimize flood damages. The revised general condition does not require engineering analyses on a case-by-case basis.

Two commenters said that the requirements of the proposed general condition will require local floodplain authorities to develop new regulations to address the documentation necessary to comply with paragraph (b), since these are new requirements that are not currently used by local floodplain agencies. These commenters indicated that it would be more appropriate for FEMA to change its regulations to address these documentation requirements. Many commenters stated that FEMA and local floodplain authorities are not equipped to handle the reviews necessary for the rebuttable presumption in paragraph (b) of proposed General Condition 27 because it contains different standards than they currently use. Several commenters disapprove of this general condition because it provides no mechanism to resolve disputes that may occur between FEMA and local floodplain agencies.

We have revised this general condition to require the permittee to comply with FEMA or FEMA-approved local floodplain construction requirements. If those construction requirements change, the permittee would have to comply with the new construction requirements.

Several commenters indicated that the criteria in paragraph (b) of proposed General Condition 27 (i.e., no more than minimal alteration of the hydrology, flow regime, or volume of waters associated with the floodplain) are not well-defined in current FEMA regulations or the guidance for implementing local floodplain regulations. These commenters said that most states do not use these criteria when assessing impacts to 100-year floodplains. Two commenters suggested that the Corps consult with state floodplain regulatory agencies and Federal transportation agencies to develop language that makes this condition practical to implement. Another commenter recommended that other factors, such as the width of the drainage course, slope, roughness coefficients, and location of above-grade fills within the 100-year floodplain should be considered.

We have removed these criteria from this general condition. Instead, we will rely on FEMA or FEMA-approved local floodplain construction requirements to ensure that the authorized work does not result in more than minimal adverse effects to the flood-holding capacity of 100-year floodplains.

One commenter identified inconsistencies between the second and fourth sentences of paragraph (b). The second sentence states that the ‘‘ * * * project and associated mitigation, will not decrease flood-holding capacity and no more than minimally alter the hydrology, flow regime, or volume of waters associated with the floodplain.’’ The fourth sentence states that the project ‘‘* * * will not result in increased flooding or more than minimally alter floodplain hydrology or flow regimes.’’ Since the documentation requirements of these sentences differ, the commenter was unsure as to what constitutes the criteria that will be used to determine compliance with the proposed general condition.

The revised general condition does not contain these inconsistencies.

Two commenters stated that the proposed general condition should apply to NWP activities in smaller tributaries, in addition to the main river. One commenter said that tributaries to streams should be considered as separate watersheds and eligible for the exception in paragraph (c) of proposed General Condition 27. This commenter requested criteria that will be used to determine whether a tributary is separate from the floodplain of the main channel. Another commenter contends that paragraph (c) of the proposed general condition is too confusing and requested clarification explaining how district engineers and prospective permittees would determine if a particular site is located in the portion of the watershed that drains less than one square mile.

This general condition applies to activities authorized by NWPs 12, 14, 29, 39, 40, 42, 43, and 44, where 100-year floodplains are delineated on either FIRMs or FEMA-approved floodplain maps. If no 100-year floodplain map has been produced for a particular tributary, then the provisions of this general condition do not apply. The revised general condition does not contain a provision similar to paragraph (c) of the proposed General Condition 27.

Several commenters suggested that the rebuttable presumption in paragraph (b) should be utilized for NWPs 21, 29, 39, 40, 42, 43, and 44, instead of prohibiting these activities in 100-year floodplains. One commenter recommended expanding proposed General Condition 27 to NWPs 7, 8, 16, and 17. Several commenters said that proposed General Condition 27 should not apply to the construction, replacement, and maintenance of water supply facilities, fish production facilities, flood control facilities, and hydraulic control and drainage facilities. Three commenters indicated that the proposed general condition should not apply to NWP 27 activities.

We have revised the proposed general condition to require, for NWP 29, 39, 40, 42, 43, and 44 activities in flood fringes of the 100-year floodplains within headwater streams, that the permittee notify the district engineer in accordance with General Condition 13 and provide documentation demonstrating that the proposed work complies with FEMA or FEMA-approved local floodplain construction regulations. We have withdrawn NWP 21 from the general condition. We do not agree that this general condition should apply to NWPs 7, 8, and 16 because the activities authorized by these NWPs have little or no adverse effects on the flood-holding capacity of 100-year floodplains. Hydropower projects authorized by NWP 17 would be required to comply with the appropriate floodplain construction requirements. This general condition does not apply to water supply facilities, fish production facilities, flood control facilities, and hydraulic control and drainage facilities, unless those activities are authorized by the NWPs listed in the general condition.

NWP 27 is not subject to this general condition.

Many commenters said that proposed General Condition 27 should not apply to NWP 12 activities. One commenter suggested a ⅓ acre limit for utility line activities in 100-year floodplains. Another commenter stated that the installation of above-ground utility line valves within 100-year floodplains should not be subject to the hydraulic modeling requirements of paragraph (b) because these activities have minor adverse effects on flood-holding capacity. Several commenters said that the requirements of paragraph (b) should not apply to utility lines that are installed underground. Three commenters said that permanent above-grade fills within 100-year floodplains for utility line activities should not be authorized by NWP 12.

We do not agree that NWP 12 activities should be excluded from this general condition. Utility line activities can adversely affect the flood-holding capacity of the 100-year floodplain. NWP 12 activities are required to comply with the appropriate FEMA or FEMA-approved local floodplain construction requirements.

Numerous commenters stated that proposed General Condition 27 should not apply to NWP 14 activities. One commenter said that the proposed general condition should apply only to transportation crossings that are constructed parallel to streams. A commenter suggested a ⅓ acre limit for NWP 14 activities in 100-year floodplains. One commenter said that restricting NWP 14 activities in 100-year floodplains could adversely affect public safety.

NWP 14 activities can adversely affect the flood-holding capacity of 100-year floodplains, as well as surface water flow patterns during flood events. The revised general condition does not prohibit NWP 14 activities in 100-year floodplains. NWP 14 activities must comply with the appropriate FEMA or FEMA-approved local floodplain construction requirements.

Many commenters said that proposed General Condition 27 should not apply to activities authorized by NWP 21 because all coal mining is regulated by the Office of Surface Mining (OSM) and delegated state agencies. Some of these commenters indicated that state mining programs have extensive performance standards for hydrological balance, which address similar issues as proposed General Condition 27. Numerous commenters stated that OSM-approved state programs have requirements to restore mined areas to approximately the original contours and that prohibiting the use of NWP 21 in 100-year floodplains will place burdens on the mining industry without providing any additional benefits.

We concur with these commenters and have removed NWP 21 from the revised general condition.

One commenter stated that, for activities authorized by paragraph (a) of NWP 40, NRCS would have to determine if the proposed work will result in unacceptable impacts on FEMA-mapped 100-year floodplains. This commenter said that NRCS, as part of its review, addresses impacts on flood storage and flood flows and that prospective permittees should be allowed to use NWP 40 if the work will not result in impacts to 100-year flood events. This commenter also recommended incorporating the requirements of proposed General Condition 27 into the text of NWP 40 so that the regulated public will be aware of these requirements.

For activities authorized by paragraph (a) of NWP 40, NRCS will determine if the proposed work complies with this general condition. We have added paragraph (e) to NWP 40, which refers permittees to General Condition 26.

Many commenters objected to applying the prohibition in paragraph (a) of proposed General Condition 27 to NWP 43 activities. A number of these commenters said that this prohibition is inappropriate since stormwater management facilities must be located in or near 100-year floodplains and their purpose is floodplain management and flood control. Several commenters said that prohibiting NWP 43 activities in 100-year floodplains will put citizens at greater risks and make their property more susceptible to flood damage. One commenter stated that proposed General Condition 27 should not apply to the maintenance of existing flood control projects.

We do not agree that NWP 43 should be excluded from this general condition. NWP 43 activities must comply with FEMA or FEMA-approved local floodplain construction requirements, if the activity is located in flood fringes of 100-year floodplains of headwater streams. Furthermore, many in-stream stormwater management facilities are located above the 1 cfs point on streams. General Condition 26 does not apply above the 1 cfs point, thus these projects will not be affected. The revised general condition does not apply to NWP 31 activities.

Many commenters stated that proposed General Condition 27 should not apply to NWP 44 activities because it would not provide any added benefits. Some of these commenters said that aggregate mining activities often increase flood storage capacity and therefore should not be prohibited by this general condition. Several commenters suggested that NWP 44 activities should be subject to the rebuttable presumption in paragraph (b) of the proposed general condition. One commenter said that the proposed general condition should not apply to aggregate mining activities because sand and gravel deposits are typically located within floodplains and off-site alternatives are usually impractical. This commenter also stated that mined land reclamation will restore surface water flow patterns. A commenter noted that dikes, berms, foundations, and impoundments associated with mining activities can be located so that they will not restrict the flow of floodwaters.

We do not agree that NWP 44 should be excluded from this general condition, because permanent, above-grade fills associated with mining activities can adversely affect the flood-holding capacity of 100-year floodplains. Mining activities that do not result in permanent above-grade fills are not subject to the requirements of this general condition.

The Corps of Engineers is very concerned with the loss of life and property resulting from unwise development in the floodplain. The Corps has recently advocated the strengthening of floodplain policy and the use of non-structural measures to reduce flood damages. We believe that the changes to the NWP program published today will play an important role in reducing damages associated with development in the floodplain. We will monitor carefully the effectiveness of the new floodplain condition to ensure that it has the intended impact on reducing floodplain development. Specifically, three years from the effective date of the new NWPs, we will prepare a report on the use of NWPs in the flood fringe area in the headwaters. This report will include an analysis of the extent, if any, to which NWPs are being used in the floodplain of areas with repeated flood damages.

Proposed General Condition 27 is adopted as General Condition 26, with the modifications discussed above.

V. Comments and Responses on Nationwide Permit Definitions

We received many comments concerning the proposed definitions for the NWPs. Comments regarding specific definitions are discussed below. In this section, we also address requests for definitions of additional terms used in the NWP program. One commenter said that certain terms defined in the

''Definitions'' section do not appear in the text of NWPs and that they should be removed. This commenter cited the definitions of ''aquatic bench'' and ''ephemeral streams.'' Another commenter objected to the differential treatment of perennial, intermittent, and ephemeral streams, stating that each stream type has important functions and values and that the proposed NWPs imply that ephemeral streams are less valuable.

We have deleted the definition of the term ''aquatic bench,'' since it is not used in the new NWPs. We believe that it is necessary to retain the definition of the term ''ephemeral stream'' because it is important to recognize the differences between perennial, intermittent, and ephemeral streams when determining whether a particular project will have more than minimal adverse effects on the aquatic environment. For example, NWP 43 does not authorize the construction of new stormwater management facilities in perennial streams. Division engineers can also regionally condition these NWPs to address regional concerns for different stream types.

Best Management Practices. One commenter recommended adding ''and wetlands'' after the phrase ''surface water quality.''

We do not agree that this change is necessary, because wetlands are surface waters. This definition is adopted as proposed.

Compensatory Mitigation. One commenter stated that the requirement in the new NWPs for vegetated buffers adjacent to open waters is inconsistent with the proposed definition of compensatory mitigation, because that definition does not recognize vegetated buffers as a form of compensatory mitigation. Another commenter recommended revising the definition to recognize the use of upland areas to provide out-of-kind compensatory mitigation. One commenter said that the definition of this term should include references to mitigation banks and in lieu fee programs. One commenter said that the word ''unavoidable'' in the definition is confusing and should be removed.

The establishment and maintenance of vegetated buffers next to open waters, including streams, is not inconsistent with the proposed definition of this term. An integral component of stream restoration projects is the reestablishment of the riparian zone, which may involve planting trees and shrubs next to the stream to restore aquatic habitat. It is not necessary to include mitigation banks and in lieu fee programs in the definition of this term because these are specific forms of compensatory mitigation. The word ''unavoidable'' is an integral part of this definition because the NWPs require on-site avoidance and minimization of losses of waters of the United States, to the maximum extent practicable (see General Condition 19). This definition is adopted as proposed.

Creation: We did not receive any comments concerning the proposed definition. This definition is adopted as proposed.

Drainage Ditch. Several commenters noted that the term ''ordinary high water line,'' which is used in the proposed definition of this term, is not defined in Corps regulations. These commenters asked if we intended to refer to the ''ordinary high water mark.'' Several commenters stated that channelized streams should not be included in this definition. One commenter recommended that this definition differentiate between channelized streams and drainage ditches by stating that channelized streams convey water from high water tables. Another commenter objected to a statement in the preamble discussion related to this definition (64 FR 39351) that the maintenance of drainage ditches which are constructed by channelizing streams is exempt from Section 404 permit requirements as long as the maintenance activity does not exceed the original ditch design and configuration. Two commenters requested that the Corps add structural drainage ditches and channels to the definition of this term.

One commenter said that a clear definition of the term ''upland drainage ditch'' is needed. Another commenter objected to the second sentence of the proposed definition, stating that drainage ditches are jurisdictional only when they are constructed in waters of the United States. This commenter indicated that the entire drainage ditch should become jurisdictional if any part of that drainage ditch is constructed in waters of the United States.

We have withdrawn the proposed definition of this term from the ''Definitions'' section of the NWPs, because of the complexity of the jurisdictional issues related to drainage ditches.

Enhancement: We did not receive any comments concerning the proposed definition. This definition is adopted as proposed.

Ephemeral Stream. Several commenters recommended modifying the proposed definition of this term to state that ephemeral streams are not waters of the United States as defined at 33 CFR 328.3(a)(3). These commenters also noted that in the July 1, 1998, **Federal Register** notice (63 FR 36042), the Corps defined the term stream bed as including only perennial and intermittent streams.

We do not agree that it is necessary to explicitly state in the definition of this term that ephemeral streams are not waters of the United States because such a statement would be inaccurate. An ephemeral stream that meets the criteria at 33 CFR part 328 is a water of the United States. We acknowledge that we made an error on page 36042 of the July 1, 1998, **Federal Register** notice. Our intent was to clarify that the PCN thresholds for stream bed impacts for the proposed NWPs apply only to perennial and intermittent stream beds, not ephemeral stream beds. The term ''stream bed,'' as used for the NWPs, applies to perennial, intermittent, and ephemeral stream beds. This definition is adopted as proposed.

Farm tract: We did not receive any comments concerning the proposed definition. This definition is adopted as proposed.

Independent utility: We did not receive any comments concerning the proposed definition. This definition is adopted as proposed.

Intermittent stream: We did not receive any comments concerning the proposed definition. This definition is adopted as proposed.

Loss of Waters of the United States. During our review of the comments received in response to the July 21, 1999, **Federal Register** notice, we found an error in the proposed definition of the term ''loss of waters of the United States.'' In the fourth sentence of the draft definition, we stated that the loss of stream bed includes the linear feet of perennial or intermittent stream bed that is filled or excavated. This statement is inaccurate because ephemeral stream bed that is filled or excavated can also be considered a loss of waters of the United States. However, the 300 linear foot limit for stream beds filled or excavated does not apply to ephemeral streams. We have modified this sentence to define the loss of stream bed as the linear feet of stream bed that is filled or excavated.

One commenter requested clarification whether the definition of this term refers only to permanent losses. This commenter also said that the proposed definition implies that all permanent losses of waters of the United States, no matter how small, are considered. Several commenters stated that only permanent losses of waters of the United States should be regulated by the Corps. Another commenter suggested that temporary losses should

be included in the measurement of loss of waters of the United States.

All permanent losses of waters of the United States are considered when calculating the amount of loss of waters of the United States to determine whether a particular activity complies with the acreage or linear limits of an NWP. All discharges of dredged or fill material into waters of the United States resulting in permanent or temporary losses of waters of the United States are regulated by the Corps, unless they are specifically exempt under Section 404(f) of the Clean Water Act. We do not agree that temporary losses of waters of the United States should be included in the threshold measurement to determine whether a activity may qualify for an NWP, since these areas revert back to waters of the United States once they are restored.

One commenter asked if the term ''loss of waters of the United States'' includes the removal of silt that has accumulated in a channel. Another commenter said that the proposed definition is so broad that it would include any effect, not just losses. This commenter said that it is not clear whether maintenance dredging of flood control channels to restore design grades is considered a loss of waters of the United States. One commenter objected to the third sentence of the proposed definition, stating that this sentence is inconsistent with Corps practice of considering compensatory mitigation when determining whether the adverse effects on the aquatic environment are minimal. A commenter suggested that the Corps consider the entire single and complete project to determine the amount of loss of waters of the United States and whether the adverse effects are minimal.

The term ''loss of waters of the United States'' does not include maintenance dredging activities that remove accumulated sediments, provided the dredged material is deposited in upland disposal sites. An exception occurs where the channel has accumulated so much sediment that wetlands have developed in the channel and the removal of those wetlands are necessary to reconstruct the channel. In that situation, we would consider the activity to result in a loss of waters of the United States. However, in most situations mitigation is not required for the cyclical removal of vegetation during maintenance activities.

The third sentence of this definition is not inconsistent with our policy of using compensatory mitigation to determine whether the net adverse effects of a particular activity on the aquatic environment are minimal. This part of the definition merely states that compensatory mitigation cannot be used to offset a loss of waters of the United States to meet the acreage limit of an NWP. For example, a project proponent cannot create ½ acre of wetlands to change a ¾ acre loss of wetlands to a ¼ acre loss of wetlands (see paragraph (b) of General Condition 19). However, the district engineer will consider compensatory mitigation when determining whether the net adverse effects on the aquatic environment are minimal.

One commenter said that this definition should also include long-term, but temporary, impacts to aquatic resource functions and values. Another commenter stated that discharges of dredged or fill material into waters of the United States to construct compensatory mitigation projects should be included in the measurement of loss of waters of the United States because these projects do not always succeed.

District engineers will determine, on a case-by-case basis whether an activity results in permanent or temporary losses of waters of the United States. We do not agree that impacts due to the construction of compensatory mitigation projects should be included in the measurement of loss of waters of the United States because these activities offset losses of waters of the United States. This definition is adopted with the modification discussed above.

Non-tidal wetland. One commenter said that the third sentence of the proposed definition is not accurate because it changes the definition of high tide line. This commenter believes that the maximum height of the tide is not the spring high tide.

The spring high tide line is the normal high tide line that occurs during the tidal cycle. Water levels higher than spring high tides result from storm surges, which are not part of the normal tidal cycle. This definition is retained as proposed.

Open Water. Two commenters stated that the proposed definition of this term is confusing and asked whether all waters of the United States that have ordinary high water marks are open waters. These commenters also inquired whether this term applies to other areas, such as ephemeral washes, arroyos, and vernal pools, that are not inundated for sufficient amounts of time to develop OHWMs and may not be waters of the United States. Two commenters said that the definition of this term should specifically exclude ephemeral washes. One commenter requested that the Corps clarify whether or not all waters of the United States have an OHWM.

To clarify this definition, we have modified the second sentence to state that open waters either have little or no emergent aquatic vegetation. Vegetated shallows are considered to be open waters. Waters of the United States with substantial amounts of emergent aquatic vegetation are wetlands, which may or may not have an OHWM. An ephemeral wash, arroyo, or vernal pool that does not have an OHWM is not a water of the United States, unless that area has wetlands that meet the criteria in 33 CFR part 328. We have added a sentence to the definition which states that ephemeral waters are not considered open waters, for the purposes of the NWPs. The definition of this term is adopted with the modifications discussed above.

Perennial stream. One commenter recommended that the Corps modify the proposed definition to state that the water table ''discharges'' into the stream for most of the year.

We do not agree with this comment, because using the word ''discharge'' in this definition is likely to create confusion since certain NWPs authorize discharges of dredged or fill material into waters of the United States for specific activities. The definition is adopted as proposed.

Permanent above-grade fill. Several commenters requested a more explicit definition of the word ''permanent'' as used in the context of this term. One commenter asked for clarification of what is considered ''above-grade'' for the purposes of this definition. One commenter said that any discharge of dredged or fill material into waters of the United States should be considered an above-grade fill.

District engineers will determine, on a case-by-case basis, what constitutes a permanent, above-grade fill for the purposes of this definition and General Condition 26. Not all discharges of dredged or fill material into waters of the United States result in permanent, above-grade fills. For example, during the installation of an underground utility line, a wetland could be excavated and backfilled with no permanent change in grade. We believe the definition is adequately clear.

One commenter expressed concern that the use of the word ''substantial'' in the definition of this term would prohibit stockpiling in 100-year floodplains during sand and gravel mining operations. Another commenter requested that the last sentence of this definition specifically state which NWPs are excluded from this definition, and whether NWP 12 is one of the excluded NWPs.

Temporary stockpiles of materials during mining operations would not be considered permanent above-grade fills for the purposes of this definition and General Condition 26. The exclusion in the last sentence of this definition applies to all structural discharges authorized by NWPs, except for structural discharges that are authorized by the NWPs listed in General Condition 26 (i.e., NWPs 12, 14, 29, 39, 40, 42, 43, and 44). This definition is adopted as proposed.

Playa. Many commenters objected to the proposed definition of this term, stating that this type of aquatic habitat is found throughout the country. Various commenters suggested additional geographic areas that should be included, such as Oklahoma, Colorado, Kansas, Oregon, Washington, and Idaho. Another commenter objected to the inclusion of the word ''small'' in the proposed definition because some playas can be large in size. This commenter also objected to including the phrase ''emergent hydrophytic vegetation'' in the definition because many playas do not support vegetation.

Since we have removed the indexed acreage limit for discharges of dredged or fill material into playas, prairie potholes, and vernal pools from NWP 40, therefore we have removed the proposed definition of a playa.

Prairie pothole. Many commenters objected to the proposed definition of this term, stating that this type of aquatic habitat is found throughout the country.

Since we have removed the indexed acreage limit for discharges of dredged or fill material into playas, prairie potholes, and vernal pools from NWP 40, we have removed the proposed definition of prairie pothole.

Preservation: We did not receive any comments concerning the proposed definition. This definition is adopted as proposed.

Project Area. One commenter objected to the inclusion of open space in the definition of this term, because the commenter believes that it penalizes the permittee for avoiding impacts to waters of the United States. Another commenter said that the exclusion of public roads from the definition of ''project area'' is unnecessary because the public roads would not have been built unless the subdivision was constructed.

Since we have replaced the indexed acreage limit of NWP 39 with a simple ½ acre limit, we have deleted the proposed definition of project area from this section.

Restoration. One commenter recommended deleting the phrase ''or exist in a substantially degraded state'' from the definition of this term, because it overlaps with the definition of the term ''enhancement.''

The definition of this term was taken from the ''Federal Guidance for the Establishment, Use and Operation of Mitigation Banks'' that was published in the November 28, 1995, **Federal Register** (60 FR 58605). Therefore, we cannot make the recommended change because this guidance is still in effect. The definition is adopted as proposed.

Riffle and Pool Complex. One commenter suggested that this term apply only to perennial streams and not to intermittent or ephemeral streams. This commenter also recommended inserting the word ''moderately'' before the word ''steep'' in the second sentence of this definition because stream beds with steep gradients seldom have riffle and pool complexes.

The definition of this term was taken from 40 CFR 230.45. Therefore, we will not modify the definition of this term for the purposes of the NWPs. District engineers will use their judgement to identify riffle and pool complexes at project sites and to distinguish between riffle and pool complexes (which are found in areas with moderate grades) and step-pool complexes (which are found in areas with steep grades, where the stream bed material consists mostly of boulders and large rocks). The definition is adopted as proposed.

Single and Complete Project. One commenter said that the criteria for linear single and complete projects should be the same as for other activities.

We do not agree with this comment. The definition of single and complete linear projects is consistent with the current NWP regulations at 33 CFR 330.2(i). This definition is adopted as proposed.

Stormwater management. Several commenters objected to the proposed definition, stating that it does not specifically include facilities that reduce downstream flooding. These commenters said that the definition should include flood control facilities so that they can be authorized by NWP 43.

The proposed definition does consider flooding and the definition of its related term, ''stormwater management facilities,'' addresses flooding issues by discussing runoff in the definition. NWP 43 can be used to authorize certain types of flood control facilities, if they are constructed to control runoff and reduce flooding impacts. This definition is adopted as proposed.

Stormwater management facilities. Two commenters said that this definition should distinguish between facilities that are designed to protect water quality and facilities that are designed for flood control purposes.

We disagree with these commenters because stormwater management facilities usually perform both functions by slowing runoff during storms and trapping sediments and chemical compounds. This definition is adopted as proposed.

Stream bed: We did not receive any comments concerning the proposed definition. This definition is adopted as proposed.

Stream channelization. One commenter requested that the Corps modify the definition of this term to more specifically identify what constitutes stream channelization. Another commenter said that the definition should contain a statement that excavation activities are not regulated by the Corps. Two commenters stated that this definition should include definitions for the terms ''structures'' and ''fills'' so that the regulated public will know when the maintenance of these structures and fills is eligible for NWP 3 or the maintenance exemption in section 404(f) of the Clean Water Act.

The proposed definition already provides sufficient examples of activities that may result in stream channelization. District engineers will determine on a case-by-case basis whether a particular activity involves stream channelization. We discuss the regulation of excavation activities in waters of the United States in a previous section of this **Federal Register** notice and do not believe it is necessary to address that issue in this definition. We do not agree that it is necessary to provide definitions of the terms ''structure'' and ''fill'' in the definition of this term. This definition is adopted as proposed.

Tidal Wetland. One commenter stated that the term ''spring high tide'' should be replaced with the phrase ''mean high tide'' to make the definition consistent with the provisions of section 10 of the Rivers and Harbors Act.

Although the shoreward limit of jurisdiction for section 10 of the Rivers and Harbors Act is mean (average) high water (see 33 CFR 329.12(a)(2)), spring high tides are waters of the United States under Section 404 of the Clean Water Act (see 33 CFR 328.3(d) and (f)). Tidal wetlands are wetlands that are inundated with tidal waters, including spring high tides. Therefore, this definition is adopted as proposed.

Vegetated Shallows. One commenter suggested inserting the phrase

''submerged or floating'' before the word ''vegetation'' in the proposed definition.

The proposed definition was taken from the definition of vegetated shallows published at 40 CFR 230.43 and we do not agree that the recommended change is necessary. This definition is adopted as proposed.

Vernal pool. Many commenters objected to the proposed definition of this term, stating that this type of aquatic habitat is found throughout the country. One commenter stated that not all regions with vernal pools exhibit the ''Mediterranean'' climates cited in the proposed definition.

Since we have removed the indexed acreage limit for discharges of dredged or fill material into playas, prairie potholes, and vernal pools from NWP 40, we have removed the proposed definition of vernal pools from this section.

Waterbody. One commenter suggested that the word ''contiguous'' in the second sentence of the proposed definition should be replaced with the word ''adjacent.''

We disagree with this recommendation, because wetlands that are adjacent to a waterbody are not necessarily part of the waterbody, unless there is a direct, surface water connection (i.e., contiguous) between the wetland and the waterbody. This definition is adopted as proposed.

Additional Definitions. Several commenters recommended that the Corps include definitions of other terms in this section of the NWPs. These comments are addressed below.

One commenter said that the phrase ''minimal effects on the aquatic environment'' needs to be precisely defined so that users of NWPs will know the extent of adverse effects authorized by the NWPs. Two commenters suggested adding definitions of the terms ''isolated waters'' and ''headwaters.'' One of these commenters requested a definition of the term ''excavation.'' One commenter said that a definition of the term ''upland'' as it is used in the context of NWPs 39, 43, and 44 is needed. Two commenters asked for a definition of the phrase ''utility line substations'' as used in NWP 12. Another commenter requested a definition of the term ''practicable'' as it is used in General Condition 21. This commenter recommended adopting the definition in the Section 404(b)(1) guidelines.

We cannot provide a national definition of the term ''minimal effects on the aquatic environment'' because the determination of minimal adverse effects for the NWPs and other general permits must be made on a case-by-case basis, by considering site characteristics, the functions and values of waters of the United States, the quality of those waters, regional differences in aquatic resource functions and values, and other factors. Definitions of the terms ''isolated waters'' and ''headwaters'' are found at 33 CFR 330.2(e) and 33 CFR 330.2(d), respectively. We do not agree that it is necessary to provide a definition of the terms ''excavation,'' ''uplands,'' or ''utility line substations.'' The Corps regulatory program uses the definition of the term ''practicable'' found at 40 CFR 230.3(q).

One commenter requested a definition of the term ''non-tidal wetlands adjacent to tidal waters'' because the word ''adjacent'' can be broadly defined. This commenter recommended limiting the phrase ''non-tidal wetlands adjacent to tidal water'' to wetlands that are found between the mean tide line and the spring high tide line; wetlands landward of the spring high tide line would not be considered adjacent to tidal waters.

As discussed in a previous paragraph in this section, wetlands located between the mean high tide line and the spring high tide line are tidal wetlands, because they are inundated with tidal waters. Non-tidal wetlands that are landward of the spring high tide line and bordering, contiguous, or neighboring to tidal waters are adjacent to tidal waters. District engineers will determine, on a case-by-case basis, whether a particular non-tidal wetland is adjacent to tidal waters.

One commenter recommended including a more detailed definition of the term ''lower perennial stream'' that is developed from the Cowardin definition and discusses the stream gradient, water velocity, stream substrate, faunal composition, and floodplain development of the lower perennial stream.

Since the term ''lower perennial stream'' is used only in the context of NWP 44, we have provided a modified version of the Cowardin definition in the text of this NWP. This modified definition describes the stream gradient, stream flow, water velocity, and the stream substrate. We do not agree that it is necessary to address the type of organisms that inhabit lower perennial streams, since the physical description of these stream segments is adequate for the purposes of NWP 44.

One commenter suggested that the Corps include a definition of the term ''vegetated buffer'' in this section. We concur with this comment and have added a definition of this term to the ''Definitions'' section of the NWPs.

For the implementation of General Condition 26, we have also added definitions of the terms ''flood fringe'' and ''floodway'' to this section. These definitions were taken from 44 CFR 9.4, FEMA's regulations for floodplain management and protection of wetlands.

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Alaska

Alaska District Engineer, ATTN: CEPOA–CO–R, P.O. Box 898, Anchorage, AK 99506–0898

Arizona

Los Angeles District Engineer, ATTN: CESPL–CO–R, P.O. Box 2711, Los Angeles, CA 90053–2325

Arkansas

Little Rock District Engineer, ATTN: CESWL–ET–WR, P.O. Box 867, Little Rock, AR 72203–0867

California

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Colorado

Albuquerque District Engineer, ATTN: CESPA–OD–R, 4101 Jefferson Plaza NE, Room 302, Albuquerque, NM 87109–3435

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New England District Engineer, ATTN: CENAE–OD–R, 696 Virginia Road, Concord, MA 01742–2751

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Georgia

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Hawaii

Honolulu District Engineer, ATTN: CEPOH–CO–O, Building 230, Fort Shafter, Honolulu, HI 96858–5440

Idaho

Walla Walla District Engineer, ATTN: CENWW–OD–RF, 210 N. Third Street, City-County Airport, Walla Walla, WA 99362–1876

Illinois

Rock Island District Engineer, ATTN: CEMVR–RD, P.O. Box 004, Rock Island, IL 61204–2004

Indiana

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Iowa

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Maryland

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Massachusetts

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Michigan

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Minnesota

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North Dakota

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Ohio

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Oklahoma

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Oregon

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Charleston District Engineer, ATTN: CESAC–CO–P, P.O. Box 919, Charleston, SC 29402–0919

South Dakota

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Washington

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West Virginia

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Pacific Territories

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Puerto Rico and Virgin Islands

Jacksonville District Engineer, ATTN: CESAJ–RD, P.O. Box 4970, Jacksonville, FL 32202–4412

Date: February 28, 2000.

Hans A. Van Winkle,

Deputy Commander for Civil Works.

Accordingly, these Nationwide Permits are issued as follows:

Nationwide Permits, Conditions, Further Information, and Definitions

A. Index of Nationwide Permits, Conditions, Further Information, and Definitions

Nationwide Permits

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7. Outfall Structures and Maintenance
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14. Linear Transportation Crossings
27. Stream and Wetland Restoration Activities
39. Residential, Commercial, and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities

43. Stormwater Management Facilities
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Nationwide Permit General Conditions

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2. Proper Maintenance
3. Soil Erosion and Sediment Controls
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8. Tribal Rights
9. Water Quality
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15. Use of Multiple Nationwide Permits.
16. Water Supply Intakes
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23. Waterfowl Breeding Areas
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Open water
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Single and complete project
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Stream bed
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Waterbody

B. Nationwide Permits and Conditions

3. *Maintenance.* Activities related to: (i) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement, are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This nationwide permit authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire, or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(ii) Discharges of dredged or fill material, including excavation, into all waters of the United States to remove accumulated sediments and debris in the vicinity of, and within, existing structures (*e.g.*, bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional rip rap to protect the structure, provided the permittee notifies the District Engineer in accordance with General Condition 13. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. The placement of rip rap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the District Engineer.

(iii) Discharges of dredged or fill material, including excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in waters of the United States. (Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a Section 404 permit provided the uplands are restored to their original pre-event location. This NWP is for the activities in waters of the United States associated with the replacement of the uplands.) The permittee must notify the District Engineer, in accordance with General Condition 13, within 12 months of the date of the damage and the work must commence, or be under contract to commence, within two years of the date of the damage. The permittee should provide evidence, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed prior to the damage. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit. Minor dredging to remove obstructions from the adjacent waterbody is limited to 50 cubic yards below the plane of the ordinary high water mark, and is limited to the amount necessary to restore the pre-existing bottom contours of the waterbody. The dredging may not be done primarily to obtain fill for any restoration activities. The discharge of dredged or fill material and all related work needed to restore the upland must be part of a single and complete project. This permit cannot be used in conjunction with NWP 18 or NWP 19 to restore damaged upland areas. This permit does not authorize the replacement of lands lost through gradual erosion processes.

Maintenance dredging for the primary purpose of navigation and beach restoration are not authorized by this permit. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit must not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding (See General Conditions 9 and 21). (Sections 10 and 404)

Note: This NWP authorizes the minimal impact repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemption for maintenance.

7. Outfall Structures and Maintenance. Activities related to: (i) construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or is otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act), and (ii) maintenance excavation, including dredging, to remove accumulated sediments blocking or restricting outfall and intake structures, accumulated sediments from small impoundments associated with outfall and intake structures, and accumulated sediments from canals associated with outfall and intake structures, provided the activity meets all of the following criteria:

a. The permittee notifies the District Engineer in accordance with General Condition 13;

b. The amount of excavated or dredged material must be the minimum necessary to restore the outfalls, intakes, small impoundments, and canals to original design capacities and design configurations (*i.e.,* depth and width);

c. The excavated or dredged material is deposited and retained at an upland site, unless otherwise approved by the District Engineer under separate authorization; and

d. Proper soil erosion and sediment control measures are used to minimize reentry of sediments into waters of the United States.

The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure. For maintenance excavation and dredging to remove accumulated sediments, the notification must include information regarding the original design capacities and configurations of the facility and the presence of special aquatic sites (*e.g.*, vegetated shallows) in the vicinity of the proposed work. (Sections 10 and 404)

12. *Utility Line Activities.* Activities required for the construction, maintenance, and repair of utility lines and associated facilities in waters of the United States as follows:

(i) *Utility lines:* The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in preconstruction contours. A ''utility line'' is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the United States, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary side casting not to exceed a total of 180 days, where appropriate. In wetlands, the top 6'' to 12'' of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the United States (*e.g.*, backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the United States through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

(ii) *Utility line substations:* The construction, maintenance, or expansion of a substation facility associated with a power line or utility line in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than ½ acre of non-tidal waters of the United States.

(iii) *Foundations for overhead utility line towers, poles, and anchors:* The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(iv) *Access roads:* The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than ½ acre of non-tidal waters of the United States. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the United States and as near as possible to preconstruction contours and elevations (*e.g.*, at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

The term ''utility line'' does not include activities which drain a water of the United States, such as drainage tile or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the loss of waters of the United States includes the filled area plus waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. Activities authorized by paragraphs (i) through (iv) may not exceed a total of ½ acre loss of waters of the United States. Waters of the United States temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevations, are not included in the calculation of permanent loss of waters of the United States. This includes temporary construction mats (*e.g.*, timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the United States are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized landclearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance, and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the United States that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the United States, even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(a) Mechanized land clearing in a forested wetland for the utility line right-of-way;

(b) A Section 10 permit is required;

(c) The utility line in waters of the United States, excluding overhead lines, exceeds 500 feet;

(d) The utility line is placed within a jurisdictional area (*i.e.,* a water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area;

(e) Discharges associated with the construction of utility line substations that result in the loss of greater than 1/10 acre of waters of the United States;

(f) Permanent access roads constructed above grade in waters of the United States for a distance of more than 500 feet; or

(g) Permanent access roads constructed in waters of the United States with impervious materials. (Sections 10 and 404)

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquefiable, or slurry substances over navigable waters of the United States, which are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

Note 3: Where the proposed utility line is constructed or installed in navigable waters of the United States (*i.e.*, Section 10 waters), copies of the PCN and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration, National Ocean Service, for charting the utility line to protect navigation.

14. *Linear Transportation Crossings.* Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (*e.g.*, highways, railways, trails, and airport runways and taxiways) in waters of the United States, including wetlands, provided the activity meets the following criteria:

a. This NWP is subject to the following acreage and linear limits:

(1) For *public linear transportation projects* in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than 1/2 acre of waters of the United States;

(2) For *public linear transportation projects* in tidal waters or non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than 1/3 acre of waters of the United States and the length of fill for the crossing in waters of the United States does not exceed 200 linear feet, or;

(3) For *private linear transportation projects* in all waters of the United States, provided the discharge does not cause the loss of greater than 1/3 acre of waters of the United States and the length of fill for the crossing in waters of the United States does not exceed 200 linear feet;

b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

(1) The discharge causes the loss of greater than 1/10 acre of waters of the United States; or

(2) There is a discharge in a special aquatic site, including wetlands;

c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the United States to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing a water of the United States. Where a road segment (*i.e.*, the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an individual permit. (Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

27. *Stream and Wetland Restoration Activities.* Activities in waters of the United States associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

(a) The activity is conducted on:

(1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS) or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or

(2) Any Federal land; or

(3) Reclaimed surface coal mined lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining or the applicable state agency (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or

(4) Any private or public land;

(b) *Notification:* For activities on any private or public land that are not described by paragraphs (a)(1), (a)(2), or (a)(3) above, the permittee must notify the District Engineer in accordance with General Condition 13; and

(c) Only native plant species should be planted at the site, if permittee is vegetating the project site.

Activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; activities needed to reestablish vegetation, including

plowing or discing for seed bed preparation; mechanized landclearing to remove undesirable vegetation; and other related activities.

This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and creation projects conducted under paragraphs (a)(2) and (a)(4), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under paragraphs (a)(1) and (a)(3), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (*i.e.*, prior to the restoration, enhancement, or creation activities) within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under paragraph (a)(1). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate State agency executing the agreement or permit. Prior to any reversion activity, the permittee or the appropriate Federal or State agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted back to its prior physical condition, it will be subject to whatever the Corps regulatory requirements will be at that future date. (Sections 10 and 404)

Note: Compensatory mitigation is not required for activities authorized by this NWP, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This NWP can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer in accordance with General Condition 13, and the project includes compensatory mitigation for impacts to waters of the United States caused by the authorized work. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition. NWP 27 can be used to authorize impacts at a mitigation bank, but only in circumstances where it has been approved under the Interagency Federal Mitigation Banks Guidelines.

39. Residential, Commercial, and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this NWP. Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

a. The discharge does not cause the loss of greater than ½ acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear feet of stream bed;

c. The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(1) The discharge causes the loss of greater than 1/10 acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters; or

(2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see Note, below).

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

e. The discharge is part of a single and complete project;

f. The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the United States were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the United States. (See General Condition 19.) The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the United States. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;

g. When this NWP is used in conjunction with any other NWP, any combined total permanent loss of waters of the United States exceeding 1/10 acre requires that the permittee notify the District Engineer in accordance with General Condition 13;

h. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream (see General Conditions 9 and 21);

i. For discharges causing the loss of 1/10 acre or less of waters of the United States, the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information: (1) The name, address, and telephone number of the permittee; (2) The location of the work; (3) A description of the work; (4) The type and acreage of

the loss of waters of the United States (*e.g.*, 1/12 acre of emergent wetlands); and (5) The type and acreage of any compensatory mitigation used to offset the loss of waters of the United States (e.g., 1/12 acre of emergent wetlands created on-site);

j. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the maximum extent practicable, wetland or upland vegetated buffers next to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site; and

k. Stream channelization or stream relocation downstream of the point on the stream where the annual average flow is 1 cubic foot per second is not authorized by this NWP.

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The compensatory mitigation proposal required in paragraph (f) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (j) of this NWP will normally be 25 to 50 feet wide on each side of the stream, but the District Engineer may require wider vegetated buffers to address documented water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the United States to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities in waters of the United States on the project site in excess of the acreage limit for NWP 39 (*i.e.*, the combined acreage loss authorized under NWPs 39 and 40 cannot exceed 1/2 acre).

Subdivisions: For any real estate subdivision created or subdivided after October 5, 1984, a notification pursuant to paragraph (c) of this NWP is required for any discharge which would cause the aggregate total loss of waters of the United States for the entire subdivision to exceed 1/10 acre. Any discharge in any real estate subdivision which would cause the aggregate total loss of waters of the United States in the subdivision to exceed 1/2 acre is not authorized by this NWP, unless the District Engineer exempts a particular subdivision or parcel by making a written determination that the individual and cumulative adverse environmental effects would be minimal and the property owner had, after October 5, 1984, but prior to July 21, 1999, committed substantial resources in reliance on NWP 26 with regard to a subdivision, in circumstances where it would be inequitable to frustrate the property owner's investment-backed expectations. Once the exemption is established for a subdivision, subsequent lot development by individual property owners may proceed using NWP 39. For the purposes of NWP 39, the term ''real estate subdivision'' shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial, or other real estate subdivision, including all parcels and parts thereof. (Sections 10 and 404)

Note: Areas where there is no wetland vegetation are determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the United States based on this criteria would require a PCN even though water is infrequently present in the stream channel (except for ephemeral waters).

40. *Agricultural Activities.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the purpose of improving agricultural production and the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized landclearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities, provided the permittee complies with the following terms and conditions:

a. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is a USDA program participant:

(1) The permittee must obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended (16 U.S.C. 3801 *et seq.*);

(2) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2 acre of non-tidal wetlands on a farm tract;

(3) The permittee must have an NRCS-certified wetland delineation;

(4) The permittee must implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses, if required; and

(5) The permittee must submit a report, within 30 days of completion of the authorized work, to the District Engineer that contains the following information: (a) The name, address, and telephone number of the permittee; (b) The location of the work; (c) A description of the work; (d) The type and acreage (or square feet) of the loss of wetlands (e.g., 1/3 acre of emergent wetlands); and (e) The type, acreage (or square feet), and location of compensatory mitigation (*e.g.*, 1/3 acre of emergent wetlands on the farm tract); or

b. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is not a USDA program participant (or a USDA program participant for which the proposed work does not qualify for authorization under paragraph (a) of this NWP):

(1) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2 acre of non-tidal wetlands on a farm tract;

(2) The permittee must notify the District Engineer in accordance with General Condition 13, if the discharge results in the loss of greater than 1/10 acre of non-tidal wetlands;

(3) The notification must include a delineation of affected wetlands; and

(4) The notification must include a compensatory mitigation proposal to offset losses of waters of the United States; or

c. For the construction of building pads for farm buildings, the discharge does not cause the loss of greater than 1/2 acre of non-tidal wetlands that were in agricultural production prior to December 23, 1985, (*i.e.*, farmed wetlands) and the permittee must notify the District Engineer in accordance with General Condition 13; or

d. Any activity in other waters of the United States is limited to the relocation of existing serviceable drainage ditches constructed in non-tidal streams. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams; and

e. Activities located in 100-year floodplains identified by FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps must comply with General Condition 26.

The term ''farm tract'' refers to a parcel of land identified by the Farm Service Agency. The Corps will identify

other waters of the United States on the farm tract. NRCS will determine if a proposed agricultural activity meets the terms and conditions of paragraph (a) of this NWP, except as provided below. For those activities that require notification, the District Engineer will determine if a proposed agricultural activity is authorized by paragraphs (b), (c), and/or (d) of this NWP. USDA program participants requesting authorization for discharges of dredged or fill material into waters of the United States authorized by paragraphs (c) or (d) of this NWP, in addition to paragraph (a), must notify the District Engineer in accordance with General Condition 13 and the District Engineer will determine if the entire single and complete project is authorized by this NWP. Discharges of dredged or fill material into waters of the United States associated with completing required compensatory mitigation are authorized by this NWP. However, total impacts, including other authorized impacts under this NWP, may not exceed the ½ acre limit of this NWP. This NWP does not affect, or otherwise regulate, discharges associated with agricultural activities when the discharge qualifies for an exemption under Section 404(f) of the Clean Water Act, even though a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS pursuant to the Food Security Act of 1985, as amended, may be required. Activities authorized by paragraphs (a) through (d) may not exceed a total of ½ acre on a single farm tract. Activities authorized by paragraphs (c) and (d) are not included in the ½ acre limit for the farm tract. If the site was used for agricultural purposes and the farm owner/operator used either paragraphs (a), (b), or (c) of this NWP to authorize activities in waters of the United States to increase agricultural production or construct farm buildings, and the current landowner wants to use NWP 39 to authorize residential, commercial, or industrial development activities in waters of the United States on the site, the combined acreage loss authorized by NWPs 39 and 40 cannot exceed ½ acre. (Section 404)

41. *Reshaping Existing Drainage Ditches.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in these waters. The reshaping of the ditch cannot increase drainage capacity beyond the original design capacity or expand the area drained by the ditch as originally designed (*i.e.*, the capacity of the ditch must be the same as originally designed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality (*e.g.*, by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, increase uptake of nutrients and other substances by vegetation, etc.). The permittee must notify the District Engineer in accordance with General Condition 13, if greater than 500 linear feet of drainage ditch will be reshaped. Material resulting from excavation may not be permanently sidecast into waters but may be temporarily sidecast (up to three months) into waters of the United States, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate. This NWP does not apply to reshaping drainage ditches constructed in uplands, since these areas are not waters of the United States, and thus no permit from the Corps is required, or to the maintenance of existing drainage ditches to their original dimensions and configuration, which does not require a Section 404 permit (see 33 CFR 323.4(a)(3)). This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects. (Section 404)

42. *Recreational Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of recreational facilities, provided the activity meets all of the following criteria:

a. The discharge does not cause the loss of greater than ½ acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear feet of stream bed;

c. For discharges causing the loss of greater than 1/10 acre of non-tidal waters of the United States, the permittee notifies the District Engineer in accordance with General Condition 13;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

e. The discharge is part of a single and complete project; and

f. Compensatory mitigation will normally be required to offset the losses of waters of the United States. The notification must also include a compensatory mitigation proposal which provides for 1:1 replacement to offset authorized losses of waters of the United States.

For the purposes of this NWP, the term ''recreational facility'' is defined as a recreational activity that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours. For the purpose of this permit, the primary function of recreational facilities does not include the use of motor vehicles, buildings, or impervious surfaces. Examples of recreational facilities that may be authorized by this NWP include: hiking trails, bike paths, horse paths, nature centers, and campgrounds (excluding trailer parks). The construction or expansion of golf courses and the expansion of ski areas may be authorized by this NWP, provided the golf course or ski area does not substantially deviate from natural landscape contours and is designed to minimize adverse effects to waters of the United States and riparian areas through the use of such practices as integrated pest management, adequate stormwater management facilities, vegetated buffers, reduced fertilizer use, etc. The facility must have an adequate water quality management plan in accordance with General Condition 9, such as a stormwater management facility, to ensure that the recreational facility results in no substantial adverse effects to water quality. This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables, that are directly related to the recreational activity. This NWP does not authorize other buildings, such as hotels, restaurants, etc. The construction or expansion of playing fields (*e.g.*, baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, and the construction of new ski areas are not authorized by this NWP. (Section 404)

43. *Stormwater Management Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction and maintenance of stormwater management facilities, including activities for the excavation of

stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins, provided the activity meets all of the following criteria:

a. The discharge for the construction of new stormwater management facilities does not cause the loss of greater than ½ acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear feet of stream bed;

c. The discharge of dredged or fill material for the construction of new stormwater management facilities in perennial streams is not authorized;

d. For discharges or excavation for the construction of new stormwater management facilities or for the maintenance of existing stormwater management facilities causing the loss of greater than 1/10 acre of non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, the permittee notifies the District Engineer in accordance with General Condition 13. In addition, the notification must include:

(1) A maintenance plan. The maintenance plan should be in accordance with State and local requirements, if any such requirements exist;

(2) For discharges in special aquatic sites, including wetlands and submerged aquatic vegetation, the notification must include a delineation of affected areas; and

(3) A compensatory mitigation proposal that offsets the loss of waters of the United States. Maintenance in constructed areas will not require mitigation provided such maintenance is accomplished in designated maintenance areas and not within compensatory mitigation areas (*i.e.*, district engineers may designate non-maintenance areas, normally at the downstream end of the stormwater management facility, in existing stormwater management facilities). (No mitigation will be required for activities which are exempt from Section 404 permit requirements);

e. The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the notification must include a written statement to the District Engineer detailing compliance with this condition (*i.e.*, why the discharge must occur in waters of the United States and why additional minimization cannot be achieved);

f. The stormwater management facility must comply with General Condition 21 and be designed using best management practices (BMPs) and watershed protection techniques. Examples may include forebays (deeper areas at the upstream end of the stormwater management facility that would be maintained through excavation), vegetated buffers, and siting considerations to minimize adverse effects to aquatic resources. Another example of a BMP would be bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources from storm flows, especially downstream of the facility, that provide, to the maximum extent practicable, for long term aquatic resource protection and enhancement;

g. Maintenance excavation will be in accordance with an approved maintenance plan and will not exceed the original contours of the facility as approved and constructed; and

h. The discharge is part of a single and complete project. (Section 404)

44. *Mining Activities.* Discharges of dredged or fill material into: (i) Isolated waters, streams where the annual average flow is 1 cubic foot per second or less, and non-tidal wetlands adjacent to headwater streams, for aggregate mining (*i.e.*, sand, gravel, and crushed and broken stone) and associated support activities; (ii) lower perennial streams, excluding wetlands adjacent to lower perennial streams, for aggregate mining activities (support activities in lower perennial streams or adjacent wetlands are not authorized by this NWP); and/or (iii) isolated waters and non-tidal wetlands adjacent to headwater streams, for hard rock/mineral mining activities (*i.e.*, extraction of metalliferous ores from subsurface locations) and associated support activities, provided the discharge meets the following criteria:

a. The mined area within waters of the United States, plus the acreage loss of waters of the United States resulting from support activities, cannot exceed ½ acre;

b. The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the notification must include a written statement detailing compliance with this condition (*i.e.*, why the discharge must occur in waters of the United States and why additional minimization cannot be achieved);

c. In addition to General Conditions 17 and 20, activities authorized by this permit must not substantially alter the sediment characteristics of areas of concentrated shellfish beds or fish spawning areas. Normally, the mandated water quality management plan should address these impacts;

d. The permittee must implement necessary measures to prevent increases in stream gradient and water velocities and to prevent adverse effects (*e.g.*, head cutting, bank erosion) to upstream and downstream channel conditions;

e. Activities authorized by this permit must not result in adverse effects on the course, capacity, or condition of navigable waters of the United States;

f. The permittee must utilize measures to minimize downstream turbidity;

g. Wetland impacts must be compensated through mitigation approved by the Corps;

h. Beneficiation and mineral processing for hard rock/mineral mining activities may not occur within 200 feet of the ordinary high water mark of any open waterbody. Although the Corps does not regulate discharges from these activities, a Clean Water Act Section 402 permit may be required;

i. All activities authorized by this NWP must comply with General Conditions 9 and 21. Further, the District Engineer may require modifications to the required water quality management plan to ensure that the authorized work results in minimal adverse effects to water quality;

j. Except for aggregate mining activities in lower perennial streams, no aggregate mining can occur within stream beds where the average annual flow is greater than 1 cubic foot per second or in waters of the United States within 100 feet of the ordinary high water mark of headwater stream segments where the average annual flow of the stream is greater than 1 cubic foot per second (aggregate mining can occur in areas immediately adjacent to the ordinary high water mark of a stream where the average annual flow is 1 cubic foot per second or less);

k. *Single and complete project:* The discharge must be for a single and complete project, including support activities. Discharges of dredged or fill material into waters of the United States for multiple mining activities on several designated parcels of a single and complete mining operation can be authorized by this NWP provided the ½ acre limit is not exceeded; and

l. *Notification:* The permittee must notify the District Engineer in accordance with General Condition 13. The notification must include: (1) A description of waters of the United

States adversely affected by the project; (2) A written statement to the District Engineer detailing compliance with paragraph (b), above (i.e., why the discharge must occur in waters of the United States and why additional minimization cannot be achieved); (3) A description of measures taken to ensure that the proposed work complies with paragraphs (c) through (f), above; and (4) A reclamation plan (for aggregate mining in isolated waters and non-tidal wetlands adjacent to headwaters and hard rock/mineral mining only).

This NWP does not authorize hard rock/mineral mining, including placer mining, in streams. No hard rock/mineral mining can occur in waters of the United States within 100 feet of the ordinary high water mark of headwater streams. The terms ''headwaters'' and ''isolated waters'' are defined at 33 CFR 330.2(d) and (e), respectively. For the purposes of this NWP, the term ''lower perennial stream'' is defined as follows: ''A stream in which the gradient is low and water velocity is slow, there is no tidal influence, some water flows throughout the year, and the substrate consists mainly of sand and mud.'' (Sections 10 and 404)

C. Nationwide Permit General Conditions

The following general conditions must be followed in order for any authorization by an NWP to be valid:

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.

2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

4. Aquatic Life Movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions which may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the State or tribe in its Section 401 water quality certification and Coastal Zone Management Act consistency determination.

7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a ''study river'' for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (*e.g.,* National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

8. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. Water Quality. (a) In certain States and tribal lands an individual 401 water quality certification must be obtained or waived (See 33 CFR 330.4(c)).

(b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the State or tribal 401 certification (either generically or individually) does not require or approve a water quality management plan, the permittee must include design criteria and techniques that will ensure that the authorized work does not result in more than minimal degradation of water quality. An important component of a water quality management plan includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality. Refer to General Condition 21 for stormwater management requirements. Another important component of a water quality management plan is the establishment and maintenance of vegetated buffers next to open waters, including streams. Refer to General Condition 19 for vegetated buffer requirements for the NWPs.

10. Coastal Zone Management. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).

11. Endangered Species. (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the NWPs.

(b) Authorization of an activity by a nationwide permit does not authorize the ''take'' of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with ''incidental take'' provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal ''takes'' of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at http://www.fws.gov/r9endspp/endspp.html and http://www.nfms.gov/prot__res/esahome.html, respectively.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not

begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification. (a) Timing: Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the PCN is complete within 30 days of the date of receipt and can request the additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an individual permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Notification: The notification must be in writing and include the following information:

(1) Name, address, and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity; and

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (*e.g.,* submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7, Outfall Structures and Maintenance, the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed.

(6) For NWP 14, Linear Transportation Crossings, the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the United States and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable.

(7) For NWP 21, Surface Coal Mining Activities, the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan.

(8) For NWP 27, Stream and Wetland Restoration, the PCN must include documentation of the prior condition of the site that will be reverted by the permittee.

(9) For NWP 29, Single-Family Housing, the PCN must also include:

(i) Any past use of this NWP by the individual permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring ¼ acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than ¼ acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31, Maintenance of Existing Flood Control Projects, the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site.

(11) For NWP 33, Temporary Construction, Access, and Dewatering, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

(12) For NWPs 39, 43, and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization of losses of waters of the United States were achieved on the project site.

(13) For NWP 39, Residential, Commercial, and Institutional Developments, and NWP 42, Recreational Facilities, the PCN must include a compensatory mitigation proposal that offsets unavoidable losses of waters of the United States or justification explaining why compensatory mitigation should not be required.

(14) For NWP 40, Agricultural Activities, the PCN must include a compensatory mitigation proposal to offset losses of waters of the United States.

(15) For NWP 43, Stormwater Management Facilities, the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with State and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the United States.

(16) For NWP 44, Mining Activities, the PCN must include a description of all waters of the United States adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the United States, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for aggregate mining activities in isolated waters and non-

tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities).

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work.

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(19) For NWPs 12, 14, 29, 39, 40, 42, 43, and 44, where the proposed work involves discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within 100-year floodplains (as identified on FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps), the notification must include documentation demonstrating that the proposed work complies with the appropriate FEMA or FEMA-approved local floodplain construction requirements.

(c) Form of Notification: The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)–(19) of General Condition 13. A letter containing the requisite information may also be used.

(d) District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the PCN to expedite the process and the District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary.

Any compensatory mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required in order to ensure no more than minimal adverse effects on the aquatic environment, the activity will be authorized within the 45-day PCN period, including the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the United States will occur until the District Engineer has approved a specific mitigation plan.

(e) Agency Coordination: The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse effects on the aquatic environment to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than ½ acre of waters of the United States, the District Engineer will, upon receipt of a notification, provide immediately (*e.g.*, via facsimile transmission, overnight mail, or other expeditious manner), a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to National Marine Fisheries Service within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) Wetlands Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps. For NWP 29 see paragraph (b)(9)(iii) for parcels less than ¼ acre in size. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. Compliance Certification. Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter. The certification will include: (a) A statement that the authorized work was done in

accordance with the Corps authorization, including any general or specific conditions; (b) A statement that any required mitigation was completed in accordance with the permit conditions; and (c) The signature of the permittee certifying the completion of the work and mitigation.

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed ⅓ acre.

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

19. Mitigation. The project must be designed and constructed to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable at the project site (i.e., on site). Mitigation will be required when necessary to ensure that the adverse effects to the aquatic environment are minimal. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) Compensatory mitigation at a minimum 1:1 ratio will be required for all wetland impacts requiring a PCN. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands to meet the minimum compensatory mitigation ratio, with preservation used only in exceptional circumstances.

(b) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed;

(c) The District Engineer will require restoration, creation, enhancement, or preservation of other aquatic resources in order to offset the authorized impacts to the extent necessary to ensure that the adverse effects on the aquatic environment are minimal. An important element of any compensatory mitigation plan for projects in or near streams or other open waters is the establishment and maintenance, to the maximum extent practicable, of vegetated buffers next to open waters on the project site. The vegetated buffer should consist of native species. The District Engineer will determine the appropriate width of the vegetated buffer and in which cases it will be required. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineer may require wider vegetated buffers to address documented water quality concerns. If there are open waters on the project site and the District Engineer requires compensatory mitigation for wetland impacts to ensure that the net adverse effects on the aquatic environment are minimal, any vegetated buffer will comprise no more than ⅓ of the remaining compensatory mitigation acreage after the permanently filled wetlands have been replaced on a one-to-one acreage basis. In addition, compensatory mitigation must address adverse effects on wetland functions and values and cannot be used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWPs (*e.g.*, for NWP 39, ¼ acre of wetlands cannot be created to change a ½ acre loss of wetlands to a ¼ acre loss; however, ½ acre of created wetlands can be used to reduce the impacts of a ⅓ acre loss of wetlands). If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed.

(d) To the extent appropriate, permittees should consider mitigation banking and other appropriate forms of compensatory mitigation. If the District Engineer determines that compensatory mitigation is necessary to offset losses of waters of the United States and ensure that the net adverse effects of the authorized work on the aquatic environment are minimal, consolidated mitigation approaches, such as mitigation banks, will be the preferred method of providing compensatory mitigation, unless the District Engineer determines that activity-specific compensatory mitigation is more appropriate, based on which is best for the aquatic environment. These types of mitigation are preferred because they involve larger blocks of protected aquatic environment, are more likely to meet the mitigation goals, and are more easily checked for compliance. If a mitigation bank or other consolidated mitigation approach is not available in the watershed, the District Engineer will consider other appropriate forms of compensatory mitigation to offset the losses of waters of the United States to ensure that the net adverse effects of the authorized work on the aquatic environment are minimal.

20. Spawning Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (*e.g.*, excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (*e.g.*, location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and must not increase water flows from the project site, relocate water, or redirect water flow beyond preconstruction conditions. In addition, the activity

must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows.

22. Adverse Effects From Impoundments. If the activity, including structures and work in navigable waters of the United States or discharge of dredged or fill material, creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, State natural heritage sites, and outstanding national resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the United States may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service has concurred in a determination of compliance with this condition.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWPs only after he determines that the impacts to the critical resource waters will be no more than minimal.

26. *Fills Within 100-Year Floodplains.* For purposes of this general condition, 100-year floodplains will be identified through the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) *Discharges Below Headwaters.* Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the 100-year floodplain at or below the point on a stream where the average annual flow is five cubic feet per second (*i.e.*, below headwaters) are not authorized by NWPs 29, 39, 40, 42, 43, and 44. For NWPs 12 and 14, the prospective permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above-grade fills in waters of the United States within the 100-year floodplain below headwaters comply with FEMA or FEMA-approved local floodplain construction requirements.

(b) *Discharges in Headwaters* (*i.e.*, above the point on a stream where the average annual flow is five cubic feet per second).

(1) *Flood Fringe.* Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the flood fringe of the 100-year floodplain of headwaters are not authorized by NWPs 12, 14, 29, 39, 40, 42, 43, and 44, unless the prospective permittee notifies the District Engineer in accordance with General Condition 13. The notification must include documentation that such discharges comply with FEMA or FEMA-approved local floodplain construction requirements.

(2) *Floodway.* Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the floodway of the 100-year floodplain of headwaters are not authorized by NWPs 29, 39, 40, 42, 43, and 44. For NWPs 12 and 14, the permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above grade fills proposed in the floodway comply with FEMA or FEMA-approved local floodplain construction requirements.

D. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other Federal, State, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

E. Definitions

Best management practices: Best Management Practices (BMPs) are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

Compensatory mitigation: For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Creation: The establishment of a wetland or other aquatic resource where one did not formerly exist.

Enhancement: Activities conducted in existing wetlands or other aquatic resources which increase one or more aquatic functions.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Farm tract: A unit of contiguous land under one ownership which is operated as a farm or part of a farm.

Flood Fringe: That portion of the 100-year floodplain outside of the floodway (often referred to as ''floodway fringe.''

Floodway: The area regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than

a designated amount (not to exceed one foot as set by the National Flood Insurance Program) within the 100-year floodplain.

Independent utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage as a result of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland (*i.e.,* a water of the United States) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (*i.e.,* the spring high tide line).

Open water: An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. The term ''open water'' includes rivers, streams, lakes, and ponds. For the purposes of the NWPs, this term does not include ephemeral waters.

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Permanent above-grade fill: A discharge of dredged or fill material into waters of the United States, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by NWPs 3, 25, 36, etc. are not included.

Preservation: The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the overall aquatic ecosystem.

Restoration: Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Steep gradient sections of streams are sometimes characterized by riffle and pool complexes. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. Pools are characterized by a slower stream velocity, a streaming flow, a smooth surface, and a finer substrate.

Single and complete project: The term ''single and complete project'' is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the ''single and complete project'' (*i.e.,* a single and complete crossing) will apply to each crossing of a separate water of the United States (*i.e.,* a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations: each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland or lake, etc., are not separate waterbodies.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and BMPs, which retain water for a period of time to control runoff and/or improve the quality (*i.e.,* by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the United States, despite the modifications to increase the rate of water flow.

Tidal wetland: A tidal wetland is a wetland (*i.e.,* a water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (*i.e.,* spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

Vegetated buffer: A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (*e.g.,* aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to open waters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement, or preservation of aquatic habitats to ensure that activities authorized by NWPs result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.

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Federal Register

Thursday,
March 9, 2000

Part IV

The President

Proclamation 7280—Save Your Vision Week, 2000

Federal Register
Vol. 65, No. 47
Thursday, March 9, 2000

Presidential Documents

Title 3—

The President

Proclamation 7280 of March 6, 2000

Save Your Vision Week, 2000

By the President of the United States of America

A Proclamation

Sight is a precious gift that enables us to experience the wonder of the world around us; but few of us think about what we would do if we lost our vision. Unfortunately, millions of Americans must face this challenge because of conditions like cataracts, glaucoma, diabetic eye disease, or age-related macular degeneration.

Our most powerful tool in the battle against vision loss is early detection. A dilated eye examination can reveal signs of many eye diseases and disorders long before a patient experiences pain or any other noticeable symptom. Through early intervention and treatment, the vision loss accompanying such diseases can be reduced, postponed, or even prevented. Protective eyewear can also play a vital role in saving vision, particularly for individuals who use chemicals or operate machinery.

There is hope as well for people who suffer from low vision. Affecting 1 in 20 Americans, low vision is an impairment that cannot be corrected by standard glasses, contact lenses, medicine, or surgery, and interferes with one's ability to participate in everyday activities. While it can occur in people of all ages and backgrounds, low vision primarily affects the growing population of people over 65 years old; other higher risk populations, including Hispanic and African Americans, are more likely to develop low vision at an earlier age.

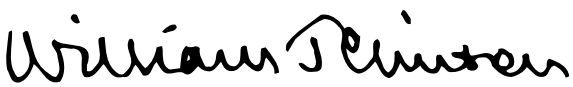
While vision loss usually cannot be restored, vision rehabilitation techniques and products can make daily life much easier for people with low vision. From improved lighting in stairways and closets to talking clocks and computers to large-print labels on appliances, there are numerous products and services that can help people with low vision maintain their confidence and independence, and improve their overall quality of life.

Every day, physicians and researchers make progress in the search for better treatments—and ultimately a cure—for vision loss. In this new century, emerging technologies will improve upon existing visual devices and techniques, and new medications will ensure more effective treatment of eye diseases and disorders. By investing in research and technology and committing to regular comprehensive eye examinations, we can ensure a brighter, healthier future for ourselves and our children.

To remind Americans of the importance of safeguarding their eyesight, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 629; 36 U.S.C. 138), has authorized and requested the President to proclaim the first week in March of each year as ''Save Your Vision Week.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 5 through March 11, 2000, as Save Your Vision Week. I urge all Americans to participate by making eye care and eye safety an important part of their lives and to ensure that dilated eye examinations are included in their regular health maintenance programs. I invite eye care professionals, the media, and all public and private organizations dedicated to preserving eyesight to join in activities that will raise awareness of the measures we can take to protect and sustain our vision.

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



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H.R. 1451/P.L. 106–173

Abraham Lincoln Bicentennial Commission Act (Feb. 25, 2000; 114 Stat. 14)

S. 632/P.L. 106–174

Poison Control Center Enhancement and Awareness Act (Feb. 25, 2000; 114 Stat. 18)

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