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Contents

Federal Register

Vol. 65, No. 132

Monday, July 10, 2000

Agency for Healthcare Research and Quality
NOTICES
Meetings:
Healthcare Research Quality National Advisory Council, 42378

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
Scientific Counselors Board, 42378–42379

Agricultural Marketing Service
RULES
Potatoes (Irish) grown in—
California and Oregon, 42275–42278

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Natural Resources Conservation Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42333–42335

Air Force Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 42338

Amtrak Reform Council
NOTICES
Meetings, 42335–42336

Animal and Plant Health Inspection Service
PROPOSED RULES
Animal welfare:
Pain and distress; definitions and reporting, 42304–42305

Census Bureau
RULES
Foreign trade statistics:
Shipper's export declaration; exporters' and forwarding agents' responsibilities for providing and reporting information, etc.; clarification, 42555–42565

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42379
Grants and cooperative agreements; availability, etc.:
Intervention epidemiologic research study of HIV/AIDS, 42379–42382
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 42382

Chemical Safety and Hazard Investigation Board
NOTICES
Meetings; Sunshine Act, 42336

Coast Guard
RULES
Ports and waterways safety:
Arkansas River, TN, 42289–42290
Boston Harbor, MA; safety zone, 42287–42289

Commerce Department
See Census Bureau
See Export Administration Bureau
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Dominican Republic, 42337–42338

Defense Department
See Air Force Department
See Navy Department

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42339
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Disability and Rehabilitation Research Projects and Centers Program, 42587–42592
Meetings:
Web-based Education Commission, 42339–42340
Postsecondary education:
Student assistance general provisions, 42340–42346

Employment and Training Administration
NOTICES
Adjustment assistance:
Amway Corp. et al., 42392–42393
Art Craft Optical Co., Inc., 42393
Art Craft Optical Co., Inc., et al., 42393–42394
Black Warrior Wireline Corp., 42394
Donnkenny Apparel, Inc., et al., 42394–42395
Furniture Crafters, 42395
Glacier Gold Compost, Inc., 42395
Johnson Controls, Inc., 42395
Shepherd Operating, Inc., 42395
Adjustment assistance and NAFTA technical adjustment assistance:
Tempset, Inc., 42392
NAFTA transitional adjustment assistance:
Ametek U.S. Gauge Division, 42395–42396
Chavez Signs, Inc., 42396
Cooper Energy Services, 42396
Invensys Best Power, 42396
Mediacopy, 42396
Southland Manufacturing Co. Inc., 42396–42397

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Hazardous waste combustors, 42292–42302
Air quality implementation plans; approval and promulgation; various States:
New Hampshire, Rhode Island, and Vermont, 42290–42292
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various states:
New Hampshire, Rhode Island, and Vermont, 42312
Ohio, 42312–42316
NOTICES
Meetings:
Mechanisms for limiting quantities of pesticides used, 42353–42355
Peer-Review Panel workshop, 42355–42356
Science Advisory Board, 42356
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Huntsman Petrochemical Corp., 42356–42360
Superfund; response and remedial actions, proposed settlements, etc.:
BMI Textron Corp., 42360–42361
Marshall J. Williams and Williams Paving Co., LLC, 42361
Superfund program:
Prospective purchaser agreements—
Green Industries Site, OH, 42360

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

Export Administration Bureau
RULES
Export administration regulations:
Parties to transaction and their responsibilities, routed export transactions, Shipper's Export Declarations, and export clearance, 42564–42575

Export-Import Bank
NOTICES
Meetings:
Sub-Saharan Africa Advisory Committee, 42361

Federal Aviation Administration
RULES
Airworthiness directives:
New Piper Aircraft, Inc., 42281–42283
Airworthiness standards:
Special conditions—
Hamilton Sunstrand; constant speed propeller, 42278–42281
PROPOSED RULES
Airworthiness directives:
Boeing, 42306–42309
NOTICES
Airport Noise and Capacity Act of 1990:
Naples Municipal Airport, FL; restriction on Stage 2 operations, 42418
Meetings:
RTCA, Inc., 42418–42419
Passenger facility charges; applications, etc.:
Okaloosa Regional Airport, FL, 42419

Federal Communications Commission
NOTICES
Common carrier services:
In-region interLATA services—
Southwestern Bell Telephone Co. et al.; application to provide services in Texas granted, 42361–42365

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 42365

Federal Election Commission
NOTICES
Civil enforcement actions involving coordinated party expenditures; status, 42365–42366

Federal Emergency Management Agency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 42366–42367
Disaster and emergency areas:
Minnesota, 42367
North Dakota, 42367–42368
Wisconsin, 42368–42369
Grants and cooperative agreements; availability, etc.:
Emergency Management Performance Grants; cost share standardization, 42369

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
FPL Energy Cape, LLC, et al., 42348–42351
Hydroelectric applications, 42351–42352
Meetings; Sunshine Act, 42352–42353
Applications, hearings, determinations, etc.:
El Paso Natural Gas Co., 42346
Koch Gateway Pipeline Co., 42346–42347
MultiFuels Marketing Co., 42347
Reliant Energy Gas Transmission Co., 42347
Unicom Energy, Inc., 42347–42348

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Hardy County, WV, 42419–42420

Federal Railroad Administration
RULES
General railroad system:
Passenger operations and waivers related to shared track use by light rail and conventional equipment, 42528–42553
NOTICES
General railroad system:
Passenger operations and waivers related to shared track use by light rail and conventional equipment; policy statement, 42525–42528

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 42369–42370
Meetings; Sunshine Act, 42370

Federal Transit Administration
NOTICES
General railroad system:
Passenger operations and waivers related to shared track use by light rail and conventional equipment; policy statement, 42525–42528

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Cape Sable seaside sparrow, 42316–42318
Hunting and fishing:
Refuge-specific regulations, 42318–42332

Food and Drug Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Food safety research, 42382–42386
Meetings:
Radiofrequency Micronucleus Working Group, 42386–42387
Reports and guidance documents; availability, etc.:
Combined oral contraceptives industry; labeling for healthcare providers and patients, 42387

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
NOTICES
Reports and guidance documents; availability, etc.:
Health Insurance Portability and Accountability Act health data standards; Vital and Health Statistics National Committee recommendations, 42370–42378

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
National Oral Health Policy Center and State Oral Health Leadership Partnership; correction, 42387–42388
Health Professions Education for Under-represented Minority Individuals Centers of Excellence Program; eligibility criteria, 42388–42389

Housing and Urban Development Department
RULES
Low income housing:
Housing assistance payments (Section 8)—
Tenant-based certificate and voucher programs merger into Housing Choice Voucher Program, 42507–42509
Public and Indian housing:
Admission and occupancy—
Pet ownership in public housing, 42517–42523
Public housing resident management corporations; direct funding, 42511–42515
PROPOSED RULES
Freedom of Information Act regulations; revision, 42577–42586
Public and Indian housing:
Operating fund formula; operating subsidies, 42487–42505

Indian Affairs Bureau
NOTICES
Reservation establishment, additions, etc.:
Bay Mills Indian Community, MI, 42389–42390

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Reclamation Bureau

Justice Department
See Parole Commission

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Alaska, 42390–42391

Marine Mammal Commission
NOTICES
Meetings; Sunshine Act, 42397

National Aeronautics and Space Administration
NOTICES
Meetings:
Aero-Space Technology Advisory Committee, 42397

National Council on Disability
NOTICES
Meetings; Sunshine Act, 42397–42398

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Salmon and steelhead, 42421–42486
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands prohibited species catch, 42302–42303
NOTICES
Agency information collection activities:
Proposed collection; comment request, 42336–42337

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Colfax County et al., NM; five States grazing emphasis geographic priority area; environmental quality incentives program, 42335

Navy Department
NOTICES
Meetings:
Naval Research Advisory Committee, 42338–42339

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Union of Concerned Scientists, 42305–42306
NOTICES
Environmental statements; availability, etc.:
Armed Forces Radiobiology Research Institute, 42398–42400
BWX Technologies, Inc., 42400–42402

Southern California Edison, 42402–42403
Applications, hearings, determinations, etc.:
Western Soil, Inc., 42398

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

Parole Commission
NOTICES
Meetings; Sunshine Act, 42392

Patent and Trademark Office
PROPOSED RULES
Patent cases:
Treatment of unlocatable application and patent files, 42309–42312

Presidential Documents
PROCLAMATIONS
Trade:
Generalized System of Preferences; amendments (Proc. 7328), 42595–42596
ADMINISTRATIVE ORDERS
Korean Peninsula Energy Development Organization (KEDO); U.S. contribution (Presidential Determination No. 2000-25 of June 29, 2000), 42273

Public Health Service
See Agency for Healthcare Research and Quality
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Reclamation Bureau
NOTICES
Environmental statements; notice of intent:
Contra Costa Water District's Multi-Purpose Pipeline Project, CA, 42391–42392

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 42403–42404
Investment Company Act of 1940:
Deregistration applications—
Oppenheimer Core Equity Fund et al., 42405–42407
Joint industry plan:
National Association of Securities Dealers, Inc., et al., joint transaction reporting plan extension, 42411–42412
Meetings; Sunshine Act, 42407
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 42408–42409
Chicago Board Options Exchange, Inc., 42409–42411
Pacific Exchange, Inc., 42412–42414
Philadelphia Stock Exchange, Inc., 42414–42417
Applications, hearings, determinations, etc.:
Public utility holding company filings, 42404–42405

Social Security Administration
RULES
Social security benefits and supplemental security income:
Federal old age, survivors, and disability insurance and aged, blind, and disabled—
False or misleading statement penalties; administrative procedures, 42283–42287

Surface Transportation Board
NOTICES
Railroad services abandonment:
Norfolk Southern Railway Co., 42420

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

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Trade Representative, Office of United States
NOTICES
Meetings:
Industry Sector Advisory Committees—
Small and Minority Business, 42418
Trade and Environment Policy Advisory Committee, 42418

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See Surface Transportation Board

Separate Parts In This Issue

Part II
Department of Commerce, National Oceanic and Atmospheric Administration, 42421–42486

Part III
Department of Housing and Urban Development, 42487–42505

Part IV
Department of Housing and Urban Development, 42507–42509

Part V
Department of Housing and Urban Development, 42511–42515

Part VI
Department of Housing and Urban Development, 42517–42523

Part VII
Department of Transportation, Federal Railroad Administration and Federal Transit Administration, 42525–42553

Part VIII
Department of Commerce, Bureau of the Census and Bureau of Export Administration, 42555–42575

Part IX
Department of Housing and Urban Development, 42577–42586

Part X
Department of Education, 42587–42592

Part XI
The President, 42595–42596

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Administrative Orders:

Presidential Determinations:

No. 2000-25 of June 29, 2000 42273

Proclamations:

7328 42595

7 CFR

947 42275

9 CFR

Proposed Rules:

1 42304

2 42304

10 CFR

Proposed Rules:

54 42305

14 CFR

35 42278

39 42281

Proposed Rules:

39 42306

15 CFR

30 42565

732 42565

740 42565

743 42565

748 42565

750 42565

752 42565

758 42565

762 42565

772 42565

774 42565

20 CFR

404 42283

416 42283

24 CFR

960 42518

964 42512

982 42508

Proposed Rules:

15 42578

990 42488

33 CFR

165 (2 documents) 42287, 42289

37 CFR

Proposed Rules:

1 42309

40 CFR

52 42290

60 42292

63 42292

261 42292

270 42292

Proposed Rules:

52 (2 documents) 42312

81 42312

49 CFR

209 42529

211 42529

50 CFR

223 (2 documents) 42422, 42481

679 42302

Proposed Rules:

17 42316

25 42318

32 42318

Federal Register
Vol. 65, No. 132
Monday, July 10, 2000

Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–25 of June 29, 2000

U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO): Certification and Waiver

Memorandum for the Secretary of State

Pursuant to section 576(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, as enacted in Public Law 106–113, (the ''Act''), I hereby certify that:

(1) the effort to can and safely store all spent fuel from North Korea's graphite-moderated nuclear reactors has been successfully concluded;

(2) North Korea is complying with its obligations under the agreement regarding access to suspect underground construction; and

(3) the United States has made and is continuing to make significant progress on eliminating the North Korean ballistic missile threat, including further missile tests and its ballistic missile exports.

Pursuant to the authority vested in me by section 576(d) of the Act, I hereby determine that it is vital to the national security interests of the United States to furnish up to $20 million in funds made available under the heading ''Nonproliferation, Anti-terrorism, Demining and Related Programs'' of that Act, for assistance for KEDO and therefore I hereby waive the requirement in section 576(c)(3) to certify that: North Korea has terminated its nuclear weapons program, including all efforts to acquire, develop, test, produce, or deploy such weapons.

You are hereby authorized and directed to report this certification and wavier to the Congress and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
Washington, June 29, 2000.

[FR Doc. 00–17471
Filed 7–7–00; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 65, No. 132
Monday, July 10, 2000

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV00–947–1 IFR]

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County; Suspension of Handling, Reporting, and Assessment Collection Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends for the 2000–2001 and future seasons the minimum grade, size, quality, maturity, pack, inspection, and other related requirements prescribed under the Oregon-California potato marketing order. It also suspends all reporting and assessment collection requirements. The marketing order regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County, and is administered locally by the Oregon-California Potato Committee (Committee). This rule will reduce industry-operating expenses.

DATES: Effective July 1, 2000. Comments received by September 8, 2000 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Marketing Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties in California, and in all counties in Oregon, except Malheur County, 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 of Agriculture (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 maintains continuity with the current suspension. 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 suspends the minimum grade, size, quality, maturity, pack, inspection, and other related requirements prescribed under the Oregon-California potato marketing order. It also suspends all reporting and assessment collection requirements. The marketing order regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County, and is administered locally by the Oregon-California Potato Committee. This rule will reduce industry expenses, as it decides whether the marketing order should be continued.

Section 947.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety of potatoes grown in the production area during any period. Section 947.51 authorizes the modification, suspension, or termination of regulations issued under part 947. Termination or suspension authority also is specified in § 947.71.

Section 947.60 provides that whenever potatoes are regulated pursuant to § 947.52, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. The cost of inspection and certification is borne by handlers.

Prior to the 1999–2000 season, minimum grade, size, quality, maturity, and pack requirements for potatoes regulated under the order were specified in § 947.340 *Handling Regulation* [7 CFR part 947.340]. This regulation, with modifications and exemptions for different varieties and types of shipments, provided that all potatoes grade at least U.S. No. 2; be at least 2 inches in diameter or weigh at least 4

ounces, and be not more than moderately skinned. Additionally, potatoes packed in cartons had to be U.S. No. 1 grade or better, with an additional tolerance allowed for internal defects, or U.S. No. 2 grade weighing at least 10 ounces. Section 947.340 also included waivers of inspection procedures, reporting and safeguard requirements for special purpose shipments, and a minimum quantity exemption of 19 hundredweight per day. Related provisions appear in the regulations at § 947.130, *Special Purpose Certificates—application and issuance;* § 947.132 *Reports;* § 947.133 *Denial and appeals;* and § 847.134 *Establishment of list of manufacturers of potato products.*

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Oregon-California potatoes that have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its March 31, 2000, meeting, the Committee recommended suspending the handling and inspection regulations and related sections for the 2000–2001 and future seasons. It also recommended that all reporting and assessment collection requirements be suspended, too. The Committee requested that this rule be effective on July 1, 2000, which is the date shipments of the 2000 Oregon-California potato crop are expected to begin.

The objective of the handling and inspection requirements is to ensure that only acceptable quality potatoes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived. It would like to further assess this matter during the 2000–2001 and future seasons.

Potato prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Therefore, the Committee continues to explore various alternatives for reducing costs.

The Committee recommended suspending the handling regulations for a one-year trial from July 1, 1999, through June 30, 2000. The Committee was concerned that the elimination of current requirements could possibly result in lower quality potatoes being shipped to fresh markets. Also, there was some concern that the Oregon-California potato industry could lose sales to other potato producing areas that were covered by quality and inspection requirements. For these reasons, the Committee recommended the one-year suspension of the requirements for the 1999–2000 marketing season.

The Committee believes that this one-year trial was successful and recommended continuing the suspension of the handling and inspection requirements indefinitely. Last season's suspension was implemented by the Department with an interim final rule published in the **Federal Register** on June 25, 1999 (64 FR 34113) and finalized on September 13, 1999 (64 FR 49352). Continuation of the suspension for the 2000–2001 and subsequent seasons will enable the Committee to further study the impacts on the industry and consider appropriate actions for ensuing seasons.

This rule will enable handlers to ship potatoes without regard to the minimum grade, size, quality, maturity, pack, and inspection requirements, and continue to decrease handler costs associated with inspection. This rule will not restrict handlers from seeking inspection on a voluntary basis. The Committee will continue to evaluate the effects of removing the minimum requirements on marketing and on producer returns at its annual spring meetings.

Consistent with the suspension of § 947.340, this rule also suspends §§ 947.120, 947.123, 947.130, 947.132, 947.133, and 947.134 of the rules and regulations in effect under the order. Sections 947.120 and 947.123 provide authority for hardship exemptions from inspection and certification, and establish reporting and recordkeeping requirements when such exemptions are in place. Sections 947.130, 947.132, 947.133, and 947.134 are safeguard and reporting provisions of the order that are applicable to special purpose shipments when inspection and certification requirements are in place. Section 947.125 regarding minimum quantity assessment exemptions, and § 947.180 regarding monthly assessment reports expire by their own terms on June 30, 2000.

The September 13, 1999, interim final rule also established reporting requirements for the 1999–2000 season so the Committee could obtain information on which to collect assessments. In previous seasons, it had obtained this information from inspection reports. However, these reports were eliminated with the suspension of mandatory inspection. The reporting requirements will not be needed during the 2000–2001 and future seasons because the Committee recommended that no assessments be collected from handlers during these seasons.

Section 947.247 of the marketing order currently prescribes an assessment rate of $0.004 per hundredweight of assessable potatoes for the Oregon-California Potato Committee. Authorization to assess potato handlers enables the Committee to incur expenses that are necessary to administer the marketing order. With the suspension of handling, inspection, and reporting requirements, a limited Committee budget will be needed for program administration during the 2000–2001 and future seasons. For 2000–2001, the Committee recommended a budget of $2,000 for management and its spring meetings. It has about $10,000 in operating reserves to cover approved Committee expenses.

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 initial 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 30 handlers of Oregon-California potatoes who are subject to regulation under the marketing order and approximately 450 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

The Committee estimates that about 83 percent of the handlers ship under $5,000,000 worth of Oregon-California

potatoes and about 17 percent of the handlers ship over $5,000,000 worth of Oregon-California potatoes on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Oregon-California potato producers, average annual producer receipts are approximately $294,000, excluding receipts from other sources. In view of the foregoing, it can be concluded that the majority of handlers and producers of Oregon-California potatoes may be classified as small entities.

At its March 31, 2000, meeting, the Committee recommended suspending the handling and related regulations. It also recommended suspending all reporting and assessment collection regulations. The Committee requested that this rule be effective on July 1, 2000, which is the date shipments of the 2000 Oregon-California potato crop are expected to begin. This rule will allow the Oregon-California potato industry to market potatoes without minimum grade, size, quality, maturity, pack, and inspection requirements.

The objective of the handling requirements is to ensure that only acceptable quality potatoes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived.

Potato prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Therefore, the Committee continues to explore various alternatives for reducing costs. The Committee recommended suspending the handling regulations for a one-year trial from July 1, 1999, through June 30, 2000. The Committee was concerned that the elimination of current requirements could possibly result in lower quality potatoes being shipped to fresh markets. Also, there was some concern that the Oregon-California potato industry could lose sales to other potato producing areas that were covered by quality and inspection requirements. For these reasons, the Committee recommended the one-year suspension of the requirements for the 1999–2000 marketing season.

The Committee believes that this one-year trial was successful and recommends continuing the suspension that was finalized by the Department on September 13, 1999 (64 FR 49352). This will enable the Committee to further study the impacts of the suspension and consider appropriate actions for ensuing seasons.

This rule will enable handlers to ship potatoes without regard to the minimum grade, size, quality, maturity, pack, inspection, and related requirements. It will decrease handler costs associated with inspection. This rule will not restrict handlers from seeking inspection on a voluntary basis. The Committee will continue to evaluate the effects of removing the minimum requirements on marketing and on producer returns at its annual spring meetings.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will suspend minimum grade, size, quality, maturity, pack, and inspection requirements. Further, this rule will allow handlers and producers the choice to obtain inspection for potatoes, as needed, thereby reducing costs for the industry. The total cost of inspection and certification for fresh shipments of Oregon-California potatoes during the 1998–99 marketing season was estimated at $600,000. The 1998–99 marketing season was the most recent year for mandatory inspection. This is approximately $20,000 per handler. The Committee expects, however, that most handlers will continue to have some of their potatoes inspected and certified by the Federal-State Inspection Service.

The suspension of the assessment collection requirements for the 2000–2001 and future seasons also will result in some cost savings. Assessment collections during the 1999–2000 season totaled $25,500. Absent the suspension of § 947.247, assessments collected during the 2000–2001 season would have been about $26,000, according to Committee estimates.

The Committee investigated the use of other types of inspection programs as another option to reduce the cost of inspection, but believed they were not viable at this time.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178. Suspension of all of the reporting requirements is expected to reduce the reporting burden on small or large Oregon-California potato handlers by almost 300 hours, and should further reduce industry expenses. 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, 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 Oregon-California potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the March 31, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: 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.

This rule invites comments on suspension of the handling, reporting, and assessment collection regulations under the Oregon-California potato marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the regulations suspended by this action no longer tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule suspends the current handling and related regulations for Oregon-California potatoes beginning July 1, 2000; (2) this rule was recommended by the Committee at an open public meeting and all interested persons had an opportunity to express their views and provide input; (3) Oregon-California potato handlers are aware of this rule and need no additional time to comply with the relaxed requirements; (4) this rule should be in effect by July 1, 2000, the date 2000–2001 season shipments of the Oregon-California potato crop are expected to begin, and this action should apply to the entire season's

shipments; and (5) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In Part 947, §§ 947.120, 947.123, 947.125, 947.130, 947.132, 947.133, 947.134, 947.141, 947.180, 947.247, and 947.340 are suspended in their entirety effective July 1, 2000.

Dated: July 5, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–17415 Filed 7–6–00; 9:48 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 35

[Docket No. NE–120; Special Conditions No. 35–001–SC]

Special Conditions: Hamilton Sundstrand, Model NP2000 Propeller

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Hamilton Sundstrand model NP2000 constant speed propeller. This eight-bladed propeller uses a dual acting digital electro-hydraulic propeller control system and has blades constructed of composite materials. These design features are novel and unusual. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective date August 9, 2000.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, Engine and Propeller Directorate, Aircraft Certification Service, ANE–110, 12 New England Executive Park, Burlington, Massachusetts, 01803–5229; telephone (781) 238–7116; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1999, Hamilton Sundstrand applied for type certification for a new model NP2000 propeller. The NP2000 propeller uses a digital electro-hydraulic control system and blades that are constructed of composite material.

Conventional propellers on turboprop aircraft use a mechanical governor in the propeller control system that senses propeller speed and adjusts the pitch by directing hydraulic oil to the propeller actuator to increase or decrease pitch to maintain the propeller at the correct revolutions per minute (RPM). When the mechanical governor fails, the propeller pitch is controlled by a backup mechanical overspeed governor.

The Hamilton Sundstrand model NP2000 propeller uses a digital electronic governor in the propeller control system. The digital electronic governor is designed to operate a hydro-mechanical interface to direct hydraulic oil to the propeller actuator to increase or decrease pitch. The digital electronic governor logic commands speed governing, synchrophasing, failure monitoring and provides beta scheduling. The digital electronic governor introduces potential failures associated with electrical power, software commands, data, and environmental effects that can result in hazardous propeller effects. In addition to these features, the system has a backup mechanical overspeed governor.

The special conditions address the following airworthiness issues for the Hamilton Sundstrand model NP2000 propeller:

1. Safety assessment;
2. Propeller control system;
3. Centrifugal load tests;
4. Fatigue limits and evaluation;
5. Bird impact; and
6. Lightning strike.

The Hamilton Sundstrand model NP2000 propeller incorporates propeller blades constructed of composite material. This material has fibers that are woven or aligned in specific directions to give the material directional strength properties. These properties depend on the type of fiber, the orientation and concentration of fiber, and the resin matrix material that binds the fibers together. Composite materials introduce fatigue characteristics and failure modes that differ from metallic materials.

The requirements of part 35 were established to address the airworthiness considerations associated with metal propeller blades. Propeller blades constructed using composite material may be subject to damage due to the high impact forces associated with a bird strike. Thus, composite propellers must demonstrate propeller integrity following a bird strike.

Part 35 does not require a demonstration of propeller integrity following a lightning strike. Composite blades may not safely conduct or dissipate the electrical current from a lightning strike. Severe damage can result if the propellers are not properly protected. Therefore, composite blades must demonstrate propeller integrity following a lightning strike.

The existing certification requirements only address structural and fatigue evaluation of metal propeller blades or hubs, and those metal components of non-metallic blade assemblies. Allowable design stress limits for composite blades must consider the deteriorating effects of the environment and in-service use, particularly those effects from temperature, moisture, erosion and chemical attack. Composite blades also present new and different considerations for retention of the blades in the propeller hub.

The applicable airworthiness requirements do not contain adequate or appropriate safety standards for these novel and unusual design features.

Type Certification Basis

Under § 21.17, Hamilton Sundstrand must show that the model NP2000 propeller meets the applicable provisions of § 21.21 and part 35.

If the Administrator finds that the applicable airworthiness regulations (*i.e.* part 35), do not contain adequate or appropriate safety standards for the model NP2000 propeller because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions

would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The NP2000 propeller will incorporate the following novel and unusual design features: dual acting digital electro-hydraulic propeller control system and blades constructed of composite materials. Special conditions for a safety assessment, the propeller control system, centrifugal load tests, fatigue limits and evaluation, bird impact, and lightning strike address the novel and unusual design features. The special conditions are discussed below.

Safety Assessment

The special conditions require the applicant to conduct a safety assessment of the propeller in conjunction with the requirements for evaluating the digital electro-hydraulic control system. A safety assessment is necessary due to the increased complexity of these propeller designs and related control systems. The ultimate objective of the safety assessment requirement is to ensure that the collective risk from all propeller failure conditions is acceptably low. The basis is the concept that an acceptable total propeller design risk is achievable by managing the individual risks to acceptable levels. This concept emphasizes reducing the risk of an event proportionally with the severity of the hazard it represents.

The special conditions are written at the propeller level for a typical aircraft. The typical aircraft may be the aircraft intended for installation of the propeller. It is advised that the propeller applicant have an understanding of the intended aircraft, not to show compliance with this requirement, but to design a propeller that will be acceptable for the intended aircraft. For example, a part 25 aircraft may require different failure effects and probability of failure than a part 23 aircraft. Showing compliance with the requirement without consideration of the intended aircraft may result in a propeller that cannot be installed on the intended aircraft.

Propeller Control System

Currently, part 35 does not adequately address propellers with combined mechanical, hydraulic, digital, and electronic control systems. Propeller mechanical control systems certified under the existing requirements incorporate a mechanical governor that senses propeller speed and adjusts the pitch to absorb the engine power to maintain the propeller at the selected rotational speed. Propellers with digital electronic control components perform the same basic function but use software, electronic circuitry, and electro-hydraulic actuators. The electronic control systems may also incorporate additional functions such as failure monitoring, synchrophasing and beta scheduling. This addition of electronics to the control system may introduce new failure modes that can result in hazardous propeller effects.

Centrifugal Load Tests

Section 35.35 currently requires that the hub and blade retention arrangement of propellers with detachable blades be tested to a centrifugal load of twice the maximum centrifugal force to which the propeller would be subjected during operation. This requirement is limited to the blade and hub retention capacity and does not address composite materials and composite construction of the propeller assembly or changes in materials due to service degradation and environmental factors.

Fatigue Limits and Evaluation

The current requirement does not adequately address composite materials and is limited to metallic hubs and blades and primary load-carrying metal components of non-metallic blades. The special conditions expand the requirements to include all materials and components whose failure would cause a hazardous propeller effect and to take into account material degradation expected in service, material property variations, manufacturing variations, and environmental effects. The special conditions clarify that the fatigue limits may be determined by tests or analysis based on tests. The components whose failure may cause a hazardous propeller effect include control system components, when applicable.

The special conditions require the applicant to conduct fatigue evaluation on a typical aircraft or on an aircraft used during aircraft certification to conduct the vibration tests and evaluation required by either §§ 23.907 or 25.907. The typical aircraft may be one used to develop design criteria for the propeller or another appropriate aircraft.

Bird Impact

Currently there are no bird impact requirements in part 35. The existing requirements only address the airworthiness considerations associated with propellers that use wood and metal blades. Propeller blades of this type have demonstrated good service experience following a bird strike. Propeller blade and spinner construction now use composite materials that have a higher potential for damage from bird impact.

The need for bird impact requirements was recognized when composite blades were introduced in the 1970's; the safety issue has been addressed by special tests and special conditions for composite blade certifications. These special conditions were unique for each propeller and effectively stated that the propeller will withstand a four-pound bird impact without contributing to a hazardous propeller effect. These special tests and special conditions have been effective for over four million flight hours. There have not been any accidents attributed to bird impact on composite propellers. The selection of a four-pound bird has been substantiated by the extensive service history of blades that have been designed using the four-pound bird criteria.

Lightning Strike

Currently there are no lightning strike requirements in part 35. The need for lightning strike requirements was recognized when composite blades were first introduced in the 1970's; the safety issue has been addressed by special tests and special conditions for each design using composite blades. The special tests and special conditions, which were unique for each propeller, effectively stated that the propeller must be able to withstand a lightning strike without contributing to a hazardous propeller effect. These special tests and special conditions have been effective for over four million flight hours. There have not been any accidents attributed to a lightning strike on composite propellers.

Discussion of Comments

Interested persons have been afforded the opportunity to participate in the making of these special conditions. No comments were received on the special conditions as proposed. After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the special conditions without change.

Applicability

As discussed above, these special conditions are applicable to the Hamilton Sundstrand model NP2000 propeller. Should Hamilton Sundstrand apply at a later date for a change to the type certificate to include another model incorporating the same or novel or unusual design features, the special conditions would apply to that model as

well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of propellers. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the propeller.

List of Subjects in 14 CFR Part 35

Air transportation, Aircraft, Aviation safety, Safety.

The authority citations for these special conditions are as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Hamilton Sundstrand model NP2000 propellers.

In addition to the requirements of part 35, the following requirements apply to the propeller.

(a) *Definitions.* Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, for the purpose of these special conditions the following definitions apply to the propeller:

(1) Propeller. The propeller is defined by the components listed in the type design.

(2) Propeller system. The propeller system consists of the propeller plus all the components necessary for its functioning, but not necessarily included in the propeller type design.

(3) Hazardous propeller effects. The following are regarded as hazardous propeller effects:

(i) A significant overspeed of the propeller.

(ii) The development of excessive drag.

(iii) Thrust in the opposite direction to that commanded by the pilot.

(iv) A release of the propeller or any major portion of the propeller.

(v) A failure that results in excessive unbalance.

(vi) The unintended movement of the propeller blades below the established minimum in-flight low pitch position.

(4) Major propeller effects. The following are regarded as major propeller effects:

(i) An inability to feather.

(ii) An inability to command a change in propeller pitch.

(iii) A significant uncommanded change in pitch.

(iv) A significant uncontrollable torque or speed fluctuation.

(b) *Safety analysis.*

(1)(i) An analysis of the propeller system must be carried out to assess the likely consequence of all failures that can reasonably be expected to occur. This analysis must consider the following:

(A) The propeller system in a typical installation. When the analysis depends on representative components, assumed interfaces, or assumed installed conditions, the assumptions must be stated in the analysis.

(B) Consequential secondary failures and latent failures.

(C) Multiple failures referred to in paragraph (b)(4) or that result in hazardous propeller effects.

(ii) A summary must be made of those failures that could result in major propeller effects or hazardous propeller effects, together with an estimate of the probability of occurrence of those effects.

(iii) It must be shown that hazardous propeller effects are not predicted to occur at a rate in excess of that defined as extremely remote (probability of 10^{-7} or less per propeller flight hour). The estimated probability for individual failures may be insufficiently precise to enable the total rate for hazardous propeller effects to be assessed. For propeller certification, it is acceptable to consider that the intent of this paragraph has been achieved if the probability of a hazardous propeller effect arising from an individual failure can be predicted to be not greater than 10^{-8} per propeller flight hour. It will also be accepted that, in dealing with probabilities of this low order of magnitude, absolute proof is not possible and reliance must be placed on engineering judgment and previous experience combined with sound design and test philosophies.

(iv) It must be shown that major propeller effects are not predicted to occur at a rate in excess of that defined as remote (probability of 10^{-5} or less per propeller flight hour).

(2) If significant doubt exists as to the effects of failures or likely combination of failures, any assumption of the effect may be required to be verified by test.

(3) It is recognized that the probability of primary failures of certain single elements (for example, blades) cannot be sensibly estimated in numerical terms. If the failure of such elements is likely to result in hazardous propeller effects, reliance must be placed on meeting the prescribed integrity requirements of part 35 and these special conditions. These instances must be stated in the safety analysis.

(4) If reliance is placed on a system or device, such as safety devices, feathering and overspeed systems, instrumentation, early warning devices, maintenance checks, and similar equipment or procedures, to prevent a failure from progressing to hazardous propeller effects, the possibility of a safety system failure in combination with a basic propeller failure must be covered. If items of a safety system are outside the control of the propeller manufacturer, the assumptions of the safety analysis with respect to the reliability of these parts must be clearly stated in the analysis and identified in the installation and operation instructions required under § 35.3.

(5) If the acceptability of the safety analysis is dependent on one or more of the following, it must be identified in the analysis and appropriately substantiated.

(i) Performance of mandatory maintenance actions at stated intervals required for certification and other maintenance actions. This includes the verification of the serviceability of items that could fail in a latent manner. These maintenance intervals must be published in the appropriate manuals. Additionally, if errors in maintenance of the propeller system could lead to hazardous propeller effects, the appropriate procedures must be published in the appropriate propeller manuals.

(ii) Verification of the satisfactory functioning of safety or other devices at pre-flight or other stated periods. The details of this satisfactory functioning must be published in the appropriate manuals.

(iii) The provisions of specific instrumentation not otherwise required.

(iv) A fatigue assessment.

(6) If applicable, the safety analysis must include the assessment of indicating equipment, manual and automatic controls, governors and propeller control systems, synchrophasers, synchronizers, and propeller thrust reversal systems.

(c) *Propeller control system.* The requirements of this section are applicable to any system or component that controls, limits or monitors propeller functions.

(1) The propeller control system must be designed, constructed and validated to show that:

(i) The propeller control system, operating in normal and alternative operating modes and transition between operating modes, performs the intended functions throughout the declared operating conditions and flight envelope.

(ii) The propeller control system functionality is not adversely affected by the declared environmental conditions, including temperature, electromagnetic interference (EMI), high intensity radiated fields (HIRF) and lightning. The environmental limits to which the system has been satisfactorily validated must be documented in the appropriate propeller manuals.

(iii) A method is provided to indicate that an operating mode change has occurred if flight crew action is required. In such an event, operating instructions must be provided in the appropriate manuals.

(2) The propeller control system must be designed and constructed so that, in addition to compliance with paragraph (b), Safety analysis:

(i) A level of integrity consistent with the intended aircraft is achieved.

(ii) A single failure or malfunction of electrical or electronic components in the control system does not cause a hazardous propeller effect.

(iii) Failures or malfunctions directly affecting the propeller control system in a typical aircraft, such as structural failures of attachments to the control, fire, or overheat, do not lead to a hazardous propeller effect.

(iv) The loss of normal propeller pitch control does not cause a hazardous propeller effect under the intended operating conditions.

(v) The failure or corruption of data or signals shared across propellers does not cause a major or hazardous propeller effect.

(3) Electronic propeller control system imbedded software must be designed and implemented by a method approved by the Administrator that is consistent with the criticality of the performed functions and minimizes the existence of software errors.

(4) The propeller control system must be designed and constructed so that the failure or corruption of aircraft-supplied data does not result in hazardous propeller effects.

(5) The propeller control system must be designed and constructed so that the loss, interruption or abnormal characteristic of aircraft-supplied electrical power does not result in hazardous propeller effects. The power quality requirements must be described in the appropriate manuals.

(6) The propeller control system description, characteristics and authority, in both normal operation and failure conditions, and the range of control of other controlled functions must be specified in the appropriate propeller manuals.

(d) *Centrifugal load tests.* It must be demonstrated that a propeller, accounting for environmental degradation expected in service, complies with paragraphs (d)(1), (d)(2) and (d)(3) of these special conditions without evidence of failure, malfunction, or permanent deformation that would result in a major or hazardous propeller effect. Environmental degradation may be accounted for by adjustment of the loads during the tests.

(1) The hub, blade retention system, and counterweights must be tested for a period of one hour to a load equivalent to twice the maximum centrifugal load to which the propeller would be subjected during operation at the maximum rated rotational speed.

(2) If appropriate, blade features associated with transitions to the retention system (e.g., a composite blade bonded to a metallic retention) may be tested either during the test required by paragraph (d)(1) or in a separate component test.

(3) Components used with or attached to the propeller (*e.g.*, spinners, de-icing equipment, and blade erosion shields) must be subjected to a load equivalent to 159 percent of the maximum centrifugal load to which the component would be subjected during operation at the maximum rated rotational speed. This must be performed by either:

(i) Testing at the required load for a period of 30 minutes; or

(ii) Analysis based on test.

(e) *Fatigue limits and evaluation.* (1) Fatigue limits must be established by tests or analysis based on tests, for propeller:

(i) Hubs;

(ii) Blades;

(iii) Blade retention components; and

(iv) Other components that are affected by fatigue loads and that are shown under paragraph (b), Safety analysis, as having a fatigue failure mode leading to hazardous propeller effects.

(2) The fatigue limits must take the following into account:

(i) All known and reasonably foreseeable vibration and cyclic load patterns that are expected in service; and

(ii) Expected service deterioration, variations in material properties, manufacturing variations, and environmental effects.

(3) A fatigue evaluation of the propeller must be conducted to show that hazardous propeller effects due to fatigue will be avoided throughout the intended operational life of the propeller on either:

(i) The intended aircraft, by complying with §§ 23.907 or 25.907 as applicable; or

(ii) A typical aircraft.

(f) *Bird impact.* It must be demonstrated, by tests or analysis based on tests or experience on similar designs, that the propeller is capable of withstanding the impact of a four pound bird at the critical location(s) and critical flight condition(s) of the intended aircraft without causing a major or hazardous propeller effect.

(g) *Lightning strike.* It must be demonstrated, by tests or analysis based on tests or experience on similar designs, that the propeller is capable of withstanding a lightning strike without causing a major or hazardous propeller effect.

Issued in Burlington, Massachusetts on June 27, 2000.

David A. Downey,

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

[FR Doc. 00–17242 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–20–AD; Amendment 39–11817; AD 2000–14–08]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. PA–42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all The New Piper Aircraft, Inc. (Piper) PA–42 series airplanes that are equipped with pneumatic deicing boots. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident (on airplanes other than the affected Piper airplanes) that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The Piper PA–42 series airplanes have a similar type design (as it relates to airframe pneumatic deice boots) to the incident and accident airplanes. The actions specified by this AD are intended to assure that flight crews activate the pneumatic wing and

tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: This AD becomes effective on August 21, 2000.

ADDRESSES: You may examine information related to this AD at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–20–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What caused this AD?

This AD is the result of reports of in-flight incidents and an accident (on airplanes other than the affected Piper airplanes) that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The Piper PA–42 series airplanes have a similar type design (as it relates to airframe pneumatic deice boots) to the incident and accident airplanes.

What is the potential impact if the FAA took no action? The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Piper PA–42 series airplanes that are equipped with pneumatic deicing boots. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 30, 2000 (65 FR 16845). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the public invited to comment? Interested persons were 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.

What is FAA's Final Determination on this Issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We 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

How many airplanes does this AD impact? We estimate that this AD affects 120 airplanes in the U.S. registry.

What is the cost impact of the affected airplanes on the U.S. Register? There is no dollar cost impact. We estimate 1 workhour for you to insert the AFM revision. You can accomplish this action if you hold at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

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

For the reasons discussed above, I certify that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A 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, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–14–08 The New Piper Aircraft, Inc.: Amendment 39–11817; Docket No. 2000–CE–20–AD.

(a) *What airplanes are affected by this AD?* Models PA–42, PA–42–720, PA–42–720R, and PA–42–1000 airplanes, all serial numbers, that are:

(1) equipped with pneumatic deicing boots; and

(2) certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD. The AD does not apply to your airplane if it is not equipped with pneumatic de-icing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after August 21, 2000 (the effective date of this AD), unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

''• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.,* take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode,

if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after:

—leaving known or observed/detected icing that the flight crew has visually observed on the aircraft or was identified by the on-board sensors; and

—after the airplane is determined to be clear of ice.''

Note: The FAA recommends periodic treatment of deicing boots with approved ice release agents, such as ICEX,™ in accordance with the manufacturer's application instructions.

(e) *Can the pilot accomplish the action?* Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

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

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

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

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

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

(i) *When does this amendment become effective?* This amendment becomes effective on August 21, 2000.

Issued in Kansas City, Missouri, on July 3, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17295 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–13–U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AF20

Administrative Procedure for Imposing Penalties for False or Misleading Statements

AGENCY: Social Security Administration (SSA).

ACTION: Interim final rules with a request for comments.

SUMMARY: We are issuing these interim final rules to reflect and implement section 207 of the Foster Care Independence Act of 1999 (Public Law (Pub. L.) 106–169). This provision amended the Social Security Act (the Act) by adding a new section 1129A which provides for the imposition by SSA of a penalty on any person who knowingly (knew or should have known or acted with knowing disregard for the truth) makes a statement that is false or misleading or omits a material fact for use in determining any right to or the amount of monthly benefits under titles II or XVI. The penalty is nonpayment for a specified number of months of benefits under title II that would otherwise be payable to the person and ineligibility for cash benefits under title XVI (including State supplementary payments made by SSA according to § 416.2005).

Although we are issuing these rules as interim final rules, we are also asking for public comments on the changes made by these rules.

DATES: These regulations are effective July 10, 2000. To be sure your comments are considered, we must receive them by September 8, 2000.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703, sent by telefax to (410) 966–2830, sent by E-mail to ''*regulations@ssa.gov*,'' or delivered to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Gareth Dence, Social Insurance Specialist, Office of Program Benefits, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9872 or TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Background

Section 207 of the Foster Care Independence Act of 1999 (Pub. L. 106–169) amended title XI of the Act by adding section 1129A to help prevent and respond to fraud and abuse in SSA's programs and operations. Section 1129A provides for the imposition by SSA of a penalty on an individual who makes, or causes to be made, a statement or representation of a material fact that the person knows or should know is false or misleading or omits a material fact, or that the person makes with a knowing disregard for the truth. The statement must be made for use in determining eligibility for or the amount of benefits under title II or XVI. The penalty is nonpayment for 6, 12 or 24 months of benefits under title II that would otherwise be payable to the person and ineligibility for the same period of time for cash benefits under title XVI (including State supplementary payments made by SSA according to § 416.2005).

Section 207 of Pub. L. 106–169 directs the Commissioner of Social Security to develop rules prescribing the administrative process for making determinations under section 1129A, including when periods of penalty shall commence, and providing guidance on the exercise of discretion as to whether the penalty should be imposed in particular cases. Consequently, we are adding new rules at §§ 404.459 and 416.1340 to reflect and implement section 1129A.

Section 1129A of the Act applies to statements and representations made on or after December 14, 1999, the date of enactment of the Foster Care Independence Act of 1999.

Explanation of Changes

We are adding new §§ 404.459 and 416.1340 to our regulations. The organization and wording of these two sections are essentially identical. These sections make it clear, and as Congress provided, that if an individual knowingly (knew or should have known

or acted with knowing disregard for the truth) made a false or misleading statement with respect to one program, the penalty shall apply to benefits under both the title II and XVI programs. Applying the penalty to both programs helps protect the integrity of both programs from further fraud by the same person and helps to maintain public confidence in the integrity of our programs. A subsection-by-subsection discussion of these rules follows.

Subsection (a) describes the conditions under which you will be subject to a penalty by SSA for knowingly making a false or misleading statement of a material fact.

Subsection (b) explains that the penalty is both nonpayment of benefits under title II and ineligibility for cash benefits under title XVI. When we impose a penalty on you, you cannot receive benefits under either title II or title XVI even if the false or misleading statement was made in connection with benefits under only one of the two programs. We further explain that, as provided by the law, if we impose a penalty on your title XVI benefits, you also will not be eligible to receive State supplementary payments that SSA pays by agreement with the State.

Subsection (c) explains how long the penalty for making a false or misleading statement will last. As provided in section 1129A, the penalty will last six consecutive months the first time we penalize you, twelve consecutive months the second time we penalize you, and twenty-four consecutive months the third or subsequent time we penalize you. The penalty will not begin to run until you would otherwise be eligible for payment of benefits under either title II or title XVI. You will be ineligible to receive benefits at any time during the penalty period. If more than one penalty period has been imposed but they have not yet run, the penalties will not run concurrently.

Subsection (d) explains, as provided in section 1129A, that the imposition of a penalty will affect only your own eligibility for benefits under titles II and XVI. If we impose a penalty on you, the penalty will not affect the eligibility or amount of benefits payable under titles II or XVI to another person. For example, another person (such as your spouse or child) may be entitled to benefits under title II based on your earnings record. Benefits would still be payable to that person to the extent that you would be receiving such benefits if the penalty had not been imposed. As another example, if you are receiving title II benefits that are limited under the family maximum provision (§ 404.403) and we stop your benefits because we impose a penalty on you, we will not increase the benefits of other family members who are limited by the family maximum provision simply because you are not receiving benefits as a result of the penalty. As a third example, if you and your spouse are receiving title XVI benefits, those benefit payments to your spouse based on the benefit rate for a couple will not be affected because of the penalty. Your spouse will continue to receive one half of the couple rate.

Section 1129A also specifically provides that the imposition of a penalty will not affect your eligibility for Medicare and Medicaid benefits (titles XVIII and XIX of the Act).

Subsection (e) explains that to impose a penalty on you, we must find that you knowingly made a false or misleading statement or omitted a material fact. ''Knowingly'' means that you knew or should have known that the statement was false or misleading or omitted a material fact, or you made the statement with a knowing disregard for the truth. We will base our decision to impose a penalty on the evidence and the reasonable inferences that can be drawn from that evidence, not on mere speculation or suspicion. In determining whether you knowingly made a false or misleading statement or omitted a material fact, we will consider all of the evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether you acted knowingly, we will also consider the significance of the statement in terms of its likely impact on your benefits under titles II and/or XVI.

Your false or misleading statement may be investigated for fraud by the Office of the Inspector General for civil monetary penalty purposes (see section 1129 of the Act) or prosecuted by the United States Attorney's Office. We may impose a penalty under these rules in addition to any other penalties that may be prescribed by law.

Subsection (f) explains that if you disagree with our initial determination to impose a penalty, you have the right to request reconsideration of the penalty decision, as discussed in §§ 404.907 and 416.1407. If you do request reconsideration, you will be able to present your case in one of three ways:

1. Case review—We will give you an opportunity to review the evidence in our files and then to present oral and written evidence to us;

2. Informal conference—In addition to following the procedures of a case review, we will give you an opportunity to present witnesses; and

3. Formal conference—In addition to following the procedures of an informal conference, we will give you an opportunity to request us to subpoena adverse witnesses and relevant documents and to cross-examine adverse witnesses.

After reconsideration, if you do not agree with our reconsidered determination you may follow the normal administrative and judicial review process by requesting a hearing before an administrative law judge, Appeals Council review and Federal court review, as described in § § 404.900 and 416.1400.

Subsection (g) explains when the penalty period begins and ends. That section explains that the penalty period will not begin until the month you would otherwise be eligible to receive payments under either title II or title XVI. In addition, the point at which the penalty period begins may depend on whether you request reconsideration of our initial determination to penalize you. If you do not request reconsideration, the penalty period will begin no earlier than the first day of the second month following the month in which the time limit for requesting reconsideration ends. If you request reconsideration and our reconsidered determination does not change our original decision to penalize you, the penalty period will begin no earlier than the first day of the second month following the month we notify you of our reconsidered determination. The penalty period ends on the last day of the final month of the penalty period. Once a sanction period begins it will run continuously even if payments are intermittent.

Clarity of These Regulations

Executive Order (E.O.) 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. In addition to your substantive comments on these rules, we invite your comments on how to make these rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?

• Could we improve clarity by adding tables, lists, or diagrams?

• What else could we do to make the rules easier to understand?

Electronic Version

The electronic file of this document is available on the internet at *http://www.access.gpo.gov/su__docs/aces/aces140.html.* It is also available on the internet site for SSA (*i.e.,* SSA Online) at *http://www.ssa.gov/.*

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Pub. L. 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, for the reasons discussed below, good cause exists under 5 U.S.C. 553(b)(B) for dispensing with the notice and public comment procedures in this case.

Pub. L. 106–169 was signed into law on December 14, 1999. Section 207 applies to statements and representations made on or after this date of enactment. Moreover, section 207 requires the Commissioner to issue regulations prescribing the administrative process for making determinations under this section within 6 months after enactment. Accordingly, issuing these rules as a notice of proposed rulemaking would have delayed issuance of final rules until well past the statutory effective date and the regulatory issuance date specified by Congress. Therefore, issuing these regulations as interim final rules allows us to come as close as possible to that specified date.

In light of the immediacy of the effective date and the Congressional direction that we issue regulations needed to carry out these statutory provisions within 6 months, we believe that, under the APA, good cause exists for waiver of the prior notice procedures since issuance of proposed rules would be impracticable. Although we are issuing these rules as interim final regulations, we are requesting public comments regarding the substance of these interim final rules and will issue revised rules if necessary.

For the same reasons, we also find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d).

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these interim final rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998. However, as noted earlier, we invite your comments on how to make the rules easier to understand.

Regulatory Flexibility Act

We certify that these interim final regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These interim final regulations will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: June 28, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, we are amending subpart E of part 404 and subpart M of part 416 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart E—[Amended]

1. The authority citation for subpart E of part 404 is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 702(a)(5) and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, 902(a)(5) and 1320a–8a).

2. Section 404.459 is added to read as follows:

§ 404.459 Penalty for false or misleading statements.

(a) *Why would SSA penalize me?* You will be subject to a penalty if you make, or cause to be made, a statement or representation of a material fact for use in determining any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI and:

(1) You know or should know that the statement or representation—

(i) Is false or misleading; or

(ii) Omits a material fact; or

(2) You make the statement with a knowing disregard for the truth.

(b) *What is the penalty?* The penalty is nonpayment of benefits under title II that we would otherwise pay you and ineligibility for cash benefits under title XVI (including State supplementary payments made by SSA according to § 416.2005).

(c) *How long will the penalty last?* The penalty will last—

(1) Six consecutive months the first time we penalize you;

(2) Twelve consecutive months the second time we penalize you; and

(3) Twenty-four consecutive months the third or subsequent time we penalize you.

(d) *Will this penalty affect any of my other government benefits?* If we penalize you, the penalty will apply only to your eligibility for benefits under titles II and XVI (including State supplementary payments made by us according to § 416.2005). The penalty will not affect—

(1) Your eligibility for benefits that you would otherwise be eligible for under titles XVIII and XIX but for the imposition of the penalty; and

(2) The eligibility or amount of benefits payable under titles II or XVI to another person. For example, another person (such as your spouse or child) may be entitled to benefits under title II based on your earnings record. Benefits would still be payable to that person to

the extent that you would be receiving such benefits but for the imposition of the penalty. As another example, if you are receiving title II benefits that are limited under the family maximum provision (§ 404.403) and we stop your benefits because we impose a penalty on you, we will not increase the benefits of other family members who are limited by the family maximum provision simply because you are not receiving benefits because of the penalty.

(e) *How will SSA make its decision to penalize me?* In order to impose a penalty on you, we must find that you knowingly (knew or should have known or acted with knowing disregard for the truth) made a false or misleading statement or omitted a material fact. We will base our decision to penalize you on the evidence and the reasonable inferences that can be drawn from that evidence, not on speculation or suspicion. Our decision to penalize you will be documented with the basis and rationale for that decision. In determining whether you knowingly made a false or misleading statement or omitted a material fact so as to justify imposition of the penalty, we will consider all evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether you acted knowingly, we will also consider the significance of the false or misleading statement or omission in terms of its likely impact on your benefits.

(f) *What should I do if I disagree with SSA's initial determination to penalize me?* If you disagree with our initial determination to impose a penalty, you have the right to request reconsideration of the penalty decision as explained in § 404.907. We will give you a chance to present your case, including the opportunity for a face-to-face conference. If you request reconsideration of our initial determination to penalize you, you have the choice of a case review, informal conference, or formal conference, as described in § 416.1413(a) through (c). If you disagree with our reconsidered determination you have the right to follow the normal administrative and judicial review process by requesting a hearing before an administrative law judge, Appeals Council review and Federal court review, as explained in § 404.900.

(g) *When will the penalty period begin and end?* Subject to the additional limitations noted in paragraphs (g)(1) and (g)(2) of this section, the penalty period will begin the first day of the month for which you would otherwise receive payment of benefits under title II or title XVI were it not for imposition of the penalty. Once a sanction begins, it will run continuously even if payments are intermittent. If more than one penalty has been imposed, but they have not yet run, the penalties will not run concurrently.

(1) If you do not request reconsideration of our initial determination to penalize you, the penalty period will begin no earlier than the first day of the second month following the month in which the time limit for requesting reconsideration ends. The penalty period will end on the last day of the final month of the penalty period. For example, if the time period for requesting reconsideration ends on January 10, a 6-month period of nonpayment begins on March 1 if you would otherwise be eligible to receive benefits for that month, and ends on August 31.

(2) If you request reconsideration of our initial determination to penalize you and the reconsidered determination does not change our original decision to penalize you, the penalty period will begin no earlier than the first day of the second month following the month we notify you of our reconsidered determination. The penalty period will end on the last day of the final month of the penalty period. For example, if we notify you of our reconsidered determination on August 31, 2001, and you are not otherwise eligible for payment of benefits at that time, but would again be eligible to receive payment of benefits on October 1, 2003, a 6-month period of nonpayment would begin on October 1, 2003 and end on March 31, 2004.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart M—[Amended]

3. The authority citation for subpart M of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1129A, 1611–1615, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382–1382d, 1382h, 1383 and 1320a–8a).

4. Section 416.1340 is added to read as follows:

§ 416.1340 Penalty for false or misleading statements.

(a) *Why would SSA penalize me?* You will be subject to a penalty if you make, or cause to be made, a statement or representation of a material fact for use in determining any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI and:

(1) You know or should know that the statement or representation

(i) Is false or misleading; or

(ii) Omits a material fact; or

(2) You make the statement with a knowing disregard for the truth.

(b) *What is the penalty?* The penalty is ineligibility for cash benefits under title XVI (including State supplementary payments made by SSA according to § 416.2005) and nonpayment of any benefits under title II that we would otherwise pay you.

(c) *How long will the penalty last?* The penalty will last—

(1) Six consecutive months the first time we penalize you;

(2) Twelve consecutive months the second time we penalize you; and

(3) Twenty-four consecutive months the third or subsequent time we penalize you.

(d) *Will this penalty affect any of my other government benefits?* If we penalize you, the penalty will apply only to your eligibility for benefits under titles II and XVI (including State supplementary payments made by us according to § 416.2005). The penalty will not affect—

(1) Your eligibility for benefits that you would otherwise be eligible for under titles XVIII and XIX but for the imposition of the penalty; and

(2) The eligibility or amount of benefits payable under titles II or XVI to another person. For example, if you and your spouse are receiving title XVI benefits, those benefit payments to your spouse based on the benefit rate for a couple will not be affected because of the penalty. Your spouse will receive one half of the couple rate.

(e) *How will SSA make its decision to penalize me?* In order to impose a penalty on you, we must find that you knowingly (knew or should have known or acted with knowing disregard for the truth) made a false or misleading statement or omitted a material fact. We will base our decision to penalize you on the evidence and the reasonable inferences that can be drawn from that evidence, not on speculation or suspicion. Our decision to penalize you will be documented with the basis and rationale for that decision. In determining whether you knowingly made a false or misleading statement or omitted a material fact so as to justify imposition of the penalty, we will consider all evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether

you acted knowingly, we will also consider the significance of the false or misleading statement or omission in terms of its likely impact on your benefits.

(f) *What should I do if I disagree with SSA's initial determination to penalize me?* If you disagree with our initial determination to impose a penalty, you have the right to request reconsideration of the penalty decision as explained in § 416.1407. We will give you a chance to present your case, including the opportunity for a face-to-face conference. If you request reconsideration of our initial determination to penalize you, you have the choice of a case review, informal conference, or formal conference, as described in § 416.1413(a) through (c). If you disagree with our reconsidered determination you have the right to follow the normal administrative and judicial review process by requesting a hearing before an administrative law judge, Appeals Council review and Federal court, review as explained in § 416.1400.

(g) *When will the penalty period begin and end?* Subject to the additional limitations noted in paragraphs (g)(1) and (g)(2) of this section, the penalty period will begin the first day of the month for which you would otherwise receive payment of benefits under title II or title XVI were it not for imposition of the penalty. Once a sanction begins, it will run continuously even if payments are intermittent. If more than one penalty has been imposed, but they have not yet run, the penalties will not run concurrently.

(1) If you do not request reconsideration of our initial determination to penalize you, the penalty period will begin no earlier than the first day of the second month following the month in which the time limit for requesting reconsideration ends. The penalty period will end on the last day of the final month of the penalty period. For example, if the time period for requesting reconsideration ends on January 10, a 6-month period of nonpayment begins on March 1 if you would otherwise be eligible to receive benefits for that month, and ends on August 31.

(2) If you request reconsideration of our initial determination to penalize you and the reconsidered determination does not change our original decision to penalize you, the penalty period will begin no earlier than the first day of the second month following the month we notify you of our reconsidered determination. The penalty period will end on the last day of the final month of the penalty period. For example, if we notify you of our reconsidered determination on August 31, 2001, and you are not otherwise eligible for payment of benefits at that time, but would again be eligible to receive payment of benefits on October 1, 2003, a 6-month period of nonpayment would begin on October 1, 2003 and end on March 31, 2004.

[FR Doc. 00–17270 Filed 7–7–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–130]

RIN 2115–AA97

Safety Zone: USS John F. Kennedy, Boston Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary moving safety zones around the aircraft carrier USS *John F. Kennedy* as it transits Boston Harbor on July 10, and 17, 2000. The safety zones will be in effect Monday, July 10, 2000 from 5 a.m. to 8 a.m. Eastern Daylight Time (EDT) as the vessel transits inbound from the ''NC'' buoy to the North Jetty and Monday, July 17, 2000 from 12 noon to 2 p.m. on July 17, 2000 from North Jetty to the ''NC'' buoy as the vessel departs the Port of Boston. The safety zones are needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the ship's limited maneuverability.

DATES: This rule is effective from 6 a.m. on Monday, July 10, 2000 until 2 p.m. on Monday, July 17, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–00–130 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Boston, 455 Commercial Street, Boston, MA 02109 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Brian Downey, Marine Safety Office Boston, 617–223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

As authorized by 5 U.S.C. 553(b)(B), a notice of proposed rulemaking (NPRM) was not published for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after publication in the **Federal Register**. Due to the complex planning and coordination involved with naval scheduling, final details for the temporary closure were not provided to the Coast Guard in time to draft and publish a NPRM or a final rule 30 days in advance of its effective date. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to temporarily close a portion of Boston Harbor waterway and protect the maritime public from the hazards associated with the limited maneuverability of an aircraft carrier.

Background and Purpose

This regulation establishes two moving safety zones extending 300 yards in all directions from the aircraft carrier USS *John F. Kennedy.* The first safety zone will be enforced during the ship's transit from the Boston Harbor Entrance lighted whistle buoy ''NC'' (LLNR 10680) en route to North Jetty on July 10, 2000 from 6 a.m. to 8 a.m. or until the ship is safely moored. The second safety zone will be enforced on July 17, 2000 from 12 noon to 2 p.m. during the ship's outbound transit from North Jetty to the Boston Harbor Entrance lighted whistle buoy ''NC'' (LLNR 10680).

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone temporarily closes portions of North Channel, President Roads, and Boston Inner Harbor. Due to the limited duration of the event, and the Coast Guard's advance marine advisories, the safety zone will minimally affect vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a

significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of Boston Harbor during the periods the safety zones will be enforced. These safety zones will not have a significant economic impact on a substantial number of small entities because traffic may be permitted to pass through the zone with the permission of the Captain of the Port (COTP). Additionally, since the safety zone will be moving with the USS *John F. Kennedy,* no single portion of the harbor will be closed for an extended time as the safety zone passes. Traffic in the affected channels may still be able transit in the harbor provided they remain outside the safety zone. The Coast Guard will issue maritime advisories widely available to users of Boston Harbor and the affected channels before and during the effective period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 follows:

PART 165—REGULATED NAVIATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary section 165.T01–138 to read as follows:

§ 165.T01–038 Safety Zones: USS John F. Kennedy, Boston Harbor, Massachusetts

(a) Safety Zones:

(1) USS *John F. Kennedy* inbound transit:

(i) *Location.* The following area is a safety zone: All waters extending three hundred (300) yards in any direction from the inbound aircraft carrier USS *John F. Kennedy* during its transit from the Boston Harbor Entrance Lighted Whistle Buoy ''NC'' to its berth at North Jetty, Boston Harbor, MA.

(ii) *Enforcement Period.* This section is enforced from 6 a.m. until 8 a.m. on Monday, July 10, 2000.

(2) USS *John F. Kennedy* outbound transit:

(i) The following area is a safety zone: All waters extending three hundred (300) yards in any direction from the outbound aircraft carrier USS *John F. Kennedy* during its transit from its berth at North Jetty, Boston Harbor, to Boston Harbor Entrance Lighted Whistle Buoy ''NC''.

(ii) *Enforcement Period.* This section is enforced from 12 noon until 2 p.m. on Monday, July 17, 2000.

(b) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP) Boston.

(2) All persons and vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in section 165.23 of this part apply.

(c) Effective date: This section is effective from 6 a.m. on July 10, 2000 until 2 p.m. July 17, 2000.

Dated: June 27, 2000.

J.R. Whitehead,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 00–17337 Filed 7–5–00; 3:21 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Memphis, TN Regulation 00–014]

RIN 2115–AA97

United States Army Bridge Exercise Across the Arkansas River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Arkansas River mile 290.0 to 293.0. The zone is needed because of a bridge exercise being held by the United States Army. To ensure the safety of life and property on the navigable waters during this exercise, no vessels may enter or remain within this safety zone unless specifically authorized by the Captain of the Port, Memphis.

DATES: This rule is effective from 8:00 A.M. CST to 4:00 P.M. CST on July 25, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket 00–014 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Memphis between 7:30 A.M. and 4:00 P.M., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: COTP Memphis representative, LTJG Brian Meier, at (901) 544–3941, ext. 232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. After speaking with the Chairman of the Arkansas River Emergency Reaction Team, both the Coast Guard and local industry agreed that the exercise would cause minimal commercial disturbance. Under 5 U.S.C. (d)(3), the Coast Guard also finds good cause to make this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The United States Army Reserve Command (USARC) has identified the 493rd Engineer Group to be the Executing Command for BRIDGEX 2000 to be conducted at Ft. Chaffee, AR. Two floating ribbon bridges will be constructed across the Arkansas River. These two bridges will be made up of approximately 100 pieces of floating road or raft bays, and will be connected together using approximately 60 boats. These two bridges will then be used to cross military vehicles from both shores in both directions. After the bridges are disassembled and the river is cleared of all army equipment, the river will be reopened to commercial and recreational traffic. The purpose of any river crossing is to project combat power across a water obstacle to accomplish a mission. The 493rd Engineer Group and its attached units will utilize this exercise to sharpen skills in preparation for doing this mission in times of peace or in times of war. This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of Part 165.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The regulation will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This regulation will only be in effect for eight hours and the impacts on small entities are expected to be minimal.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)g, of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 1605; 49 CFR 1.46.

2. A new § 165.T08–029 is added to read as follows:

§ 165.T08–029 Safety Zone: Arkansas River Mile 290 to 293.

(a) *Location.* The following area is a safety zone: the waters of the Arkansas River between miles 290.0 and 293.0. The zone is needed because of a bridge exercise being held by the United States Army.

(b) *Effective date.* This section is effective on July 25, 2000, from 8 a.m. (CST) until 4 p.m. (CST) unless sooner terminated by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Memphis.

Dated: May 19, 2000.

Michael S. Gardiner,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port.

[FR Doc. 00–17366 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–042–01–6990a; A–1–FRL–6727–9]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire, Rhode Island, and Vermont; Aerospace Negative Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving negative declarations submitted by the States of New Hampshire, Rhode Island, and Vermont for aerospace coating operations. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This direct final rule is effective on September 8, 2000 without further notice, unless EPA receives adverse comment by August 9, 2000. If adverse comment is received, EPA 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: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England, One Congress Street, 11th floor, Boston, MA, 02114–2023. Copies of New Hampshire's submittal are also available at Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095. Copies of Rhode Island's submittal are also available at Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767. Copies of Vermont's submittal are also available Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

What action is EPA taking?
What are the relevant CAA requirements?
What is a control techniques guideline (CTG)?
What is the aerospace CTG?
How have New Hampshire, Rhode Island, and Vermont addressed the CAA requirements for aerospace coating operations?
What is EPA's response to the states' submittals?

What Action Is EPA Taking?

EPA is approving negative declarations for aerospace coating operations submitted by New Hampshire on September 11, 1998, by Rhode Island on March 28, 2000, and by Vermont on July 28, 1998. EPA is also correcting Table (e) in 40 CFR 52.2070 to include Rhode Island's negative declaration for the synthetic organic chemical manufacturing industry (SOCMI) distillation and reactor processes control techniques guideline categories. EPA approved the SOCMI distillation and reactor processes negative declaration for Rhode Island on December 2, 1999 (64 FR 67495) but neglected to add the appropriate entry to Table (e) at that time.

What Are the Relevant CAA Requirements?

Sections 182(b)(2) and 184(b) of the Clean Air Act contain the requirements relevant to today's action. Section 182(b)(2) requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing Control Techniques Guideline (CTG)—*i.e.*, a CTG issued prior to the enactment of the 1990 amendments to the CAA; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, *i.e.*, non-CTG sources.

Pursuant to the CAA Amendments of 1990, all of Rhode Island and portions of New Hampshire were classified as serious nonattainment for ozone. 56 FR 56694 (Nov. 6, 1991). These areas were, thus, subject to the section 182(b)(2) RACT requirement.

In addition, the States of New Hampshire, Rhode Island, and Vermont are located in the Northeast Ozone Transport Region (OTR). These states are, therefore, subject to section 184(b) of the amended CAA. Section 184(b) requires that RACT be implemented in the entire state for all VOC sources covered by a CTG issued before or after the enactment of the CAA Amendments of 1990 and for all major VOC sources (defined as 50 tons per year for sources in the OTR).

What Is a Control Techniques Guideline (CTG)?

A CTG is a document issued by EPA which establishes a ''presumptive norm'' for RACT for a specific VOC source category. Under the pre-amended CAA, EPA issued CTG documents for 29 categories of VOC sources. Section 183 of the amended CAA requires that EPA issue 13 new CTGs. Appendix E of the General Preamble of Title I (57 FR 18077) lists the categories for which EPA plans to issue new CTGs.

What Is the Aerospace CTG?

EPA issued a CTG for aerospace coating operations on March 27, 1998 (63 FR 15006). This CTG applies to aerospace coating operations with the potential to emit 25 tons of VOC or more per year.

How Have New Hampshire, Rhode Island, and Vermont Addressed the CAA Requirements for Aerospace Coating Operations?

In response to the CAA requirement to adopt RACT for all sources covered by a new CTG, New Hampshire, Rhode Island, and Vermont submitted negative declarations to EPA for the aerospace coating operations CTG category. Through the negative declaration, New Hampshire, Rhode Island, and Vermont are asserting that there are no sources within their respective states that would be subject to a rule for aerospace coating operations.

What Is EPA's Response to the States' Submittals?

EPA is approving these negative declaration submittals as meeting the CAA section 182(b)(2) and section 184(b) requirements, as applicable, for this source category. However, if evidence is submitted by August 9, 2000 that there are existing sources within the States of New Hampshire, Rhode Island, or Vermont that, for purposes of meeting the RACT requirements, would be subject to a rule for aerospace coating operations, if developed, such comments would be considered adverse and EPA would withdraw its approval action on that State's negative declaration.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective September 8, 2000 without further notice unless the Agency receives adverse comments by August 9, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and 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. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 8, 2000 and no further action will be taken on the proposed rule.

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.

Final Action

EPA is approving negative declarations submitted by New Hampshire, Rhode Island, and Vermont for aerospace coating operations. EPA is also correcting Table (e) in 40 CFR 52.2070 to include Rhode Island's negative declaration for the SOCMI distillation and reactor processes CTG categories.

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.

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 September 8, 2000. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. 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, Ozone.

Dated: June 12, 2000.

Mindy S. Lubber,

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 EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(67) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(67) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on September 11, 1998.

(i) Additional materials.

(A) Letter from the New Hampshire Department of Environmental Services dated September 11, 1998 stating a negative declaration for the aerospace coating operations Control Techniques Guideline category.

Subpart OO—Rhode Island

3. Section 52.2070 is amended as follows:

In paragraph (e), the table is amended by adding at the end of the table new citations for two negative declarations to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(e) Non Regulatory.

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approved date	Explanations
* *	*	* *	*	*
Negative Declaration for Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation and Reactor Processes Control Techniques Guideline Categories.	Statewide	Submitted 4/5/95	12/2/99, 64 FR 67495	
Negative Declaration for Aerospace Coating Operations Control Techniques Guideline Category.	Statewide	Submitted 3/28/00	July 10, 2000 [Insert FR citation from published date].	

Subpart UU—Vermont

4. Section 52.2370 is amended by adding paragraph (c)(26) to read as follows:

§ 52.2370 Identification of plan.

* * * * *

(c) * * *

(26) Revisions to the State Implementation Plan submitted by the Vermont Air Pollution Control Division on July 28, 1998.

(i) Additional materials.

(A) Letter from the Vermont Air Pollution Control Division dated July 28, 1998 stating a negative declaration for the aerospace coating operations Control Techniques Guideline category.

[FR Doc. 00–16626 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 63, 261, and 270

[FRL–6720–9]

RIN 2050–AE01

NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: On September 30, 1999 the Environmental Protection Agency (EPA) published the Hazardous Waste Combustors NESHAP Final Rule. On November 19, 1999 EPA published the first technical correction of that rule to address a time sensitive situation. Today's rule corrects numerous typographical errors and clarifies several issues from the September 30, 1999 rule, one issue from a closely-related June 19, 1998 rule, and makes one adjustment to the November 19, 1999 technical correction. These corrections and clarifications will make the NESHAP final rule easier to understand and implement.

DATES: This rule is effective on July 10, 2000.

ADDRESSES: The public may obtain a copy of this technical correction at the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll free) or (703) 412–9812 in the Washington, D.C. metropolitan area. For information on this rule contact David Hockey (5302W), Office of Solid Waste, Ariel Rios

Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, at e-mail address hockey.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Good Cause Exemption

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because it merely corrects errors and clarifies certain requirements in the Hazardous Waste Combustors NESHAP Final Rule (64 FR 52828, September 30, 1999). Today's action also supplies one omission from the emergency technical correction published on November 19, 1999 (64 FR 63209) and makes one correction to the related June 19, 1998 (63 FR 33783) final rule. With the exception of the emergency technical correction published November 19, 1999, the final rules were subject to notice and comment. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

II. Reasons and Basis for Today's Action

The Agency has received numerous comments from the regulated community requesting clarification and correction of the rule finalizing NESHAPS for hazardous waste combustors (64 FR 52828, September 30, 1999). The Agency is correcting typographical errors and misprints, as well as clarifying several matters related to preamble statements and regulatory provisions. Today's action also supplies one omission from the emergency technical correction published on November 19, 1999 (64 FR 63209) and makes one correction to the related June 19, 1998 (63 FR 33783) final rule.

The regulated community has also raised other issues and questions through informal comments as well as through litigation that will in many cases require notice and comment rulemaking. The Agency plans to propose changes in the **Federal Register** as quickly as possible that will address many of these other issues.

III. Corrections and Clarifications

A. Corrections to the September 30, 1999 Final Rule

1. Units for Particulate Matter in Appendix A, Method 5i Are Corrected

The unit for particulate matter (PM) concentration given in section 12.2 of Method 5i in appendix A of part 60 is ''mg/unit volume'' (see 64 FR 53030). However, in the preamble discussion on pages 52927–52928, the PM concentration is expressed as ''mg/dscm.'' The Agency is revising the mg/unit volume in Appendix A, because the PM criteria would change depending on the volume measured. Dry standard cubic meter (dscm) is the intended and more precise measure.

2. Sources That Have Initiated RCRA Closure Requirements Are Exempt: Table 1 to § 63.1200

Table 1 in § 63.1200 (see page 64 FR 53038) explains the exemptions from these regulations for hazardous waste combustors. According to (1)(ii) of that table, previously affected sources have to be in compliance with the closure requirements of subpart G of 40 CFR part 63, 40 CFR part 264, or 40 CFR part 265 to be exempt from the requirements of subpart EEE of part 63. The Agency agrees with commenters that, under our existing regulations, previously affected sources need only have initiated these closure requirements to be exempt, and today we are revising Table 1 of § 63.1200 to reflect this change.

3. Continuous Monitoring of Both Hydrocarbons and Carbon Monoxide Is Not Required: §§ 63.1203, 63.1204, 63.1205, and 63.1209

The preamble to the September 30, 1999 rule states on page 52848 that, to comply with the carbon monoxide and hydrocarbon emission standard, you must continuously monitor and comply with the emission standard for either carbon monoxide or hydrocarbons. If you choose to continuously monitor carbon monoxide, however, you must document compliance with the hydrocarbon standard only during the destruction and removal efficiency (DRE) test or its equivalent.

Several stakeholders note that the regulatory language implementing this provision could be interpreted to mean that continuous monitoring and compliance with both the carbon monoxide and hydrocarbon emissions standards are required. The Agency is today revising the regulatory language to clarify as intended that continuous monitoring and compliance with either the carbon monoxide or hydrocarbon standard is required. See revised §§ 63.1203(a)(5)(i), 63.1203(b)(5)(i), 63.1204(a)(5)(i)(A), 63.1204(a)(5)(ii)(B), 63.1204(b)(5)(i)(A)(*1*), 63.1205(a)(5)(i), 63.1205(b)(5)(i), 63.1209(a)(1)(i), and 63.1209(a)(7).

4. References to Subparts BB and CC of Part 264 Are Redundant: §§ 63.1203(e), 63.1204(g), 63.1205(e)

The regulatory sections that prescribe emission standards for hazardous waste burning incinerators (§ 63.1203), cement kilns (§ 63.1204), and lightweight aggregate kilns (§ 63.1205) each reference subparts BB and CC of 40 CFR part 264 that prescribe emission standards for equipment leaks, tanks, surface impoundments, and containers. Several commenters assert that is is redundant and unnecessary to reference these subparts because they are separately applicable under part 264. We agree and, to avoid redundancy, therefore delete the references from this rule.

5. The 720 Hour Operating Limit is Renewable: §§ 63.1206(b)(5)(i)(C)(1) and 63.1207(h)(2)

The preamble to the September 30, 1999 rule states that the rule allows you to operate after a failed test for purposes of pretesting or performance testing for up to a total of 720 hours of operation, renewable at the discretion of the Administrator. See 64 FR 52914 and § 63.1207(k)(2). We explain in the preamble that the 720 operating period is renewable at the discretion of the Administrator in response to commenters concerns about unforeseen delays in pretesting and testing activities and given that current RCRA rules allow renewals.

Several stakeholders noticed that we did not include allowance for renewals of the 720 hour periods in two other similar provisions of the rule: § 63.1206(b)(5)(i)(C)(*1*) pertaining to restrictions on waste burning after a change in design, operation, or maintenance that may adversely affect compliance; and § 63.1207(h)(2) pertaining to pretesting and performance testing under waived operating limits to satisfy the periodic comprehensive performance testing requirements. This was a drafting oversight and we are today correcting the rule to allow the Administrator to extend the 720 hours of operations for pretesting and performance testing as warranted in these situations as well.

6. Average Limits Are Calculated as the Average of the Test Run Averages: § 63.1209

The preamble to the September 30, 1999 rule states that feedrate limits for mercury, semi-volatile metals, low-volatile metals, and hydrochloric acid/chlorine gas must be determined by establishing the ''average of the test run averages'' from the comprehensive performance test (see pages 64 FR 52943, 52946, and 52952, respectively). However, in § 63.1209, the requirement is incorrectly expressed as the ''average of the average hourly rolling averages for each run'' from the comprehensive performance test. Today's rule amends the regulatory language to read ''the average of the test run averages,'' which was the intended phrase. We are also clarifying that the preamble summary tables for semi-volatile metals and low-volatile metals (64 FR 52945) and hydrochloric acid/chlorine gas (64 FR 52951) should state that feedrate limits for 12-hour averaging periods are established by the average of test run averages rather than the average of the average hourly rolling averages for each run.

7. The Table in § 63.1211 Summarizing Recordkeeping Requirements Is Corrected

Today's rule corrects the reference to § 63.1206(c)(7), as well as adding a new reference to for § 63.1206(c)(5), to the table of recordkeeping requirements found in § 63.1211 (see 64 FR 53065). No substantive recordkeeping changes are made by this action; we are merely updating the table's references to other sections where the substantive recordkeeping requirements are lodged.

8. The Definition of Rolling Average in the Appendix to Subpart EEE of Part 63 Is Corrected

In the definitions section of the appendix to subpart EEE, the definition for a ''rolling average'' includes a sentence on continuous emissions monitoring systems (CEMS) other than carbon monoxide and total hydrocarbons CEMS. This sentence is unnecessary because we did not finalize other CEMS-based emission standards; therefore, we are removing this sentence from the appendix to subpart EEE.

9. The Citation in § 270.42 of the Notification of Compliance Is Corrected

The September 30, 1999 final rule moved the Notification of Intent to Comply (NIC) requirements from § 63.1211 to § 63.1210, but failed to revise the citation of § 63.1211 in § 270.42. We are correcting this citation in today's rule.

10. Information Required To Be Included in the Performance Test Plan Is Consolidated: § 63.1207(f)(1)

The rule lists information that must be included in the comprehensive performance test plan under § 63.1207(f)(1). Several stakeholders note, however, that the list is not complete. Several types of additional information that must be included in the comprehensive performance test plan were inadvertently omitted from the summary list in § 63.1207(f)(1). Accordingly, to avoid a misleading summary list, we are revising the summary list to include all information that various provisions of the rule require to be included in the comprehensive performance test plan.

11. Definition of a Responsible Official Is Revised: § 63.1212(a)(2)

We are revising the definition of a ''responsible official'' provided in § 63.1212(a)(2) of the final rule so that it conforms to the definition in the Clean Air Act implementing regulations of § 63.2. We did not intend to alter the statutory definition though § 63.1212(a)(2).

12. Several Citations Are Corrected

In the § 63.1201(a) definition of an automatic waste feed cutoff system, we incorrectly cited § 63.1206(c)(2)(viii) rather than § 63.1206(c)(3)(viii). In § 63.1210(c)(2), we incorrectly cited paragraph (b)(1) rather than (c)(1). In §§ 63.1212(b)(1) and (2), we incorrectly cited requirements for § 63.1206(a)(2) rather than § 63.1206(a)(3). These citations are corrected in today's action.

13. Citation in Table 1 to § 63.1200 Is Corrected

Table 1 to § 63.1200 (3) (see 64 FR 53038) provides an exemption from the requirements of subpart EEE if you burn certain wastes exempt from regulation under section 266; however, the exemption in the table incorrectly cites section 266.100(b). The correct cite is section 266.100(c). We revised the regulations at section 266.100 as part of the HWC MACT final rule, to include a new section 266.100(b) and inadvertently failed to revise the corresponding cite in Table 1 to reflect the change made to section 266.100. Today's action revises Table 1 to reflect the correct cite to section 266.100(c).

B. Correction to the November 19, 1999 Technical Correction

In the November 19, 1999 rule, the Agency amended § 63.1210(b)(1)(iv) by replacing the word ''intent'' with ''intend'' (see 64 FR 63212). However, the Agency inadvertently deleted the words ''do not.'' Today's rule reinstates the words ''do not'' before ''intend'' in § 63.1210(b)(1)(iv).

C. Corrections to the Related June 19, 1998 Final Rule

1. Gas Turbines Are Added to the List of Approved Burners for Comparable Fuels

The June 19, 1998 (63 FR 33783) final rule establishing the comparable fuels exclusion allows the burning of comparable fuels and syngas fuels in certain combustion sources. We intended comparable fuels and syngas fuels to be burned only in those units capable of managing the excluded hazardous waste. Commenters noted that gas turbines are capable of managing and burning syngas fuels. However, we inadvertently excluded gas turbines from the list of approved comparable/syngas fuel burners. Today's action adds gas turbines to the list of approved comparable/syngas burners under § 261.38(c)(ii)(2).

D. Clarifications of the September 30, 1999 Final Rule

1. Clarification That the Emergency Safety Vent Operating Plan Is To Be Kept in the Operating Record

The preamble to the September 30, 1999 rule states on page 52907 that if you use an emergency safety vent (ESV) in your system design, then you must develop and submit an ESV operating plan with the DOC and NOC. However, there are no requirements in § 63.1206(c)(4)(ii) for submitting the plan because we intended that an ESV operating plan must only be kept in the facility's operating record. The Agency wishes to clarify today that the preamble language requiring submittal of the plan with the DOC and NOC is incorrect and should be disregarded. The ESV operating plan need only be kept in the source's operating record.

2. Preamble Language Regarding a Ten-Minute Average Limit for pH for HCl and Cl_2 Is Incorrect

In § 63.1209, paragraph (o)(3)(iv) requires owners/operators of combustion facilities using wet scrubbers to control hydrochloric acid and chlorine gas to establish a limit on the minimum pH on an hourly rolling average basis (see 64 FR 53062). However, the preamble states that the minimum pH must be established by a dual ten-minute and hourly rolling average (see 64 FR 52952). As several stakeholders pointed out, earlier in the preamble (64 FR 52920) the Agency concluded that, although there may be site-specific circumstances that warrant

shorter than one hour in duration, the ten-minute rolling average is not appropriate for a national regulation. The Agency wishes to clarify that the regulatory language is correct, and that the preamble language found on page 52952 is incorrect and should be disregarded.

3. Preamble Language Regarding Manual Stack Methods for Compliance With the HCl and Cl_2 Standards Is Incorrect

On page 52958, we state that for compliance with the hydrochloric acid and chlorine standards, you must use Method 26A in 40 CFR part 60, appendix A. We also go on to say that we reject other methods for HCl and Cl_2 compliance. These preamble statements are in error and should be disregarded. In the final regulatory language we allow the use of Methods 261, 320, or 321 for compliance.

4. The Response to Comments Associated With Combustion System Leaks Is Incorrect

The September 30, 1999 rule states that a source must control combustion system leaks by: (1) Keeping the combustion zone sealed to prevent combustion system leaks; (2) maintaining the maximum combustion zone pressure lower than ambient pressure using an instantaneous monitor; or, (3) upon written approval of the Administrator, using an alternative means of control to provide control of combustion system leaks equivalent to maintenance of combustion pressure lower than ambient pressure (see § 63.1206(c)(5)). In our response to comments on the proposed rule (see US EPA, ''Final Response to Comments to the Proposed HWC MACT Standards: Volume II,'' July 1999) we incorrectly implied that it would be appropriate for a source to use a one-minute averaging period to comply with the provisions of option 2 above.[1]

The Agency today clarifies that the response to comments language is incorrect. We considered the commenters' suggested approach of allowing the use of one-minute averaging periods to comply with option 2 (*i.e.,* § 63.1206(c)(5)(i)(B)), but later rejected the approach because it did not assure fugitive emissions would be adequately controlled. The response to comments document represents an earlier point of view and inadvertently was not updated to reflect our final position.[2]

5. Clarification of Applicability of Subpart EEE to Facilities Previously Subject to Title V Permitting

Following promulgation of the September 30, 1999 rule, we received a number of questions regarding the applicability of subpart EEE to sources that operate, or are being constructed/reconstructed, at facilities previously subject to, or in possession of, a title V permit. These questions arise in response to the rule language of 40 CFR 63.1200 (a)(2) where we state that, ''Both area sources and major sources, not previously subject to title V permitting, are immediately subject to the requirement to apply for and obtain a title V permit in all States, and in areas covered by part 71 of this chapter.'' In today's correction document we are clarifying that the provisions of subpart EEE apply to each hazardous waste burning incinerator, cement kiln, and lightweight aggregate kiln individually firing hazardous waste on, or following, the effective date of the final rule (September 30, 1999).[3] This includes individual affected sources operating at facilities currently in possession of a title V permit due to other regulated activities at the facility. The language of § 63.1200(a)(2) in no way limits the need for facilities currently in possession of a title V permit to fulfill the requirements of subpart EEE as they apply to each affected source operating at the facility. Section 63.1200(a)(2) is only meant to state that facilities in possession of a title V permit do not have to apply for a new title V permit for the hazardous waste burning activities regulated by subpart EEE. Our presumption in promulgating § 63.1200(a)(2) is that sources currently in possession of a title V permit must follow the applicable requirements of the general provisions found at 40 CFR part 63, subpart A, and the permit revision provisions of 40 CFR part 71, subpart A.

6. Operator Training and Certification Requirement Is Clarified

Many stakeholders have expressed concern that the operator training and certification requirements under § 63.1206(c)(6) could be interpreted to require virtually every employee at the facility to pass a technical training and certification program equivalent to that of the American Society of Mechanical Engineers (ASME) QHO–1 program. These stakeholders note that a formal technical training and certification program is not necessary or appropriate for employees holding positions not related to the emissions control aspects of facilities operations—such as some of the administrative staff, quarry workers and raw material handlers.

We agree and are clarifying today that we neither intended the facility to subject all personnel to the training and certification program requirements nor intended the facility to establish a single training and certification program applicable to all categories of personnel whose activities may reasonably be expected to directly affect emissions of hazardous air pollutants. Instead, we contemplated a source having several programs suitable for each category of personnel, and that for control room operators and shift supervisors, the training and certification program would certainly be of a technical level similar to ASME QHO–1. For personnel whose activities may reasonably be expected to directly affect emissions, the certification may simply consist of documentation that they successfully completed a training program commensurate with the level of responsibility for the particular position. Personnel such as quarry operators, raw material workers, finished product handlers, some types of process monitoring operations, and much of the administrative staff whose activities are not expected to directly affect emissions of hazardous air pollutants from the source are exempted from the operator training and certification requirements of § 63.1206(c)(6).

7. Part 60, Appendix A, Method 5i, Section 12.2b—Relative Standard Deviation (RSD) Criteria for Emissions Less Than 1 mg/dscm Are Clarified

Part 60, appendix A, Method 5i, section 12.2b includes a graduated precision criteria for eliminating imprecise data. Section 12.2a includes a simplified equation for calculating the precision criteria, called the Relative Standard Deviation, or RSD. The proposal to include a precision criteria in Method 5i was widely endorsed.

[1] For instance, one of the sections in this document states ''therefore, we have decided to follow commenters suggestions and allow a one-minute averaging period to account for small fluctuations in combustion chamber pressure due to inaccurate readings of the monitor or feeding practices that lead to brief increases in combustion pressure.'' See Final Response to Comments to the Proposed HWC MACT Standards, Volume II, Section Titled ''Combustion Fugitive Emissions Maximum Pressure Limit,'' pages 5 and 6.

[2] We note that the decision not to allow the use of averaging periods to comply with § 63.1206(c)(5)(i)(B) is reflected in the September 30, 1999 preamble (see 64 FR 52920) and the July 1999 Final Technical Support Document, Volume IV, Chapter 2, Section 2.2.1, and Chapter 8.

[3] The provisions of subpart EEE apply to each source firing hazardous waste on the effective date of the rule unless a source can demonstrate that it is exempt from subpart EEE because the source is in compliance with one of the three provisions identified in table 1 to § 63.1200.

The precision criteria currently state that if the average of paired train data is greater than 10 mg/dscm, the resulting RSD must not be greater than 10%. At a paired train data average of 1 mg/dscm, the RSD must not be greater than 25%. Between 1 and 10 mg/dscm, the RSD is linearly scaled from 25 to 10% based on the actual mean value recorded. The method is silent about what the RSD is if the mean emissions are less than 1 mg/dscm.

We intended there to be no RSD criteria if the average emissions from the paired data trains is less than 1 mg/dscm. In other words, no precision criteria exist and all average results less than 1 mg/dscm are acceptable.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a ''good cause'' finding, see Section I above, that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings 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.*). Our compliance with these statutes and Executive Orders for the underlying rule is discussed in the September 30, 1999 **Federal Register** document.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of July 10, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Immediate Effective Date

EPA is making this rule effective immediately. The rule adopts amendments which are purely technical in that they correct mistakes which are clearly inconsistent with the Agency's stated intent. This rule also clarifies ambiguities or errors in preamble statements to help stakeholders better understand the regulations themselves. Comment on such changes is unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reasons, there is good cause to make the rule effective immediately pursuant to 5 U.S.C. 553 (d)(3).

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Batteries, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Heaters, Household appliances, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Sulfuric acid plants, Tires, Urethane, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Comparable fuels, Syngas fuels, Excluded hazardous waste, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: June 13, 2000.

Michael Shapiro,

Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

2. Appendix A in part 60 is amended by revising paragraph 12.2(b) in test method 5i to read as follows:

Appendix A—Test Methods

* * * * *

Method 5I—Determination of Low Level Particulate Matter Emissions From Stationary Sources

* * * * *

12.2 * * *

b. A minimum precision criteria for Reference Method PM data is that RSD for any data pair must be less than 10% as long as the mean PM concentration is greater than 10 mg/dscm. If the mean PM concentration is less than 10 mg/dscm higher RSD values are acceptable. At mean PM concentration of 1 mg/dscm acceptable RSD for paired trains is 25%. Between 1 and 10 mg/dscm acceptable RSD criteria should be linearly scaled from 25% to 10%. Pairs of manual method data exceeding these RSD criteria should be eliminated from the data set used to develop a PM CEMS correlation or to assess RCA. If the mean PM concentration is less than 1 mg/dscm, RSD does not apply and the mean result is acceptable.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

3. The authority citation for part 63 continues to read as follows:

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

Subpart EEE—National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors

4. Section 63.1200 is amended by revising Table 1 in paragraph (b) to read as follows:

§ 63.1200 Who is subject to these regulations?

* * * * *

(b) * * *

TABLE 1 TO § 63.1200.—HAZARDOUS WASTE COMBUSTORS EXEMPT FROM SUBPART EEE

If	And if	Then
(1) You are a previously affected source.	(i) You ceased feeding hazardous waste for a period of time greater than the hazardous waste residence time (i.e., hazardous waste no longer resides in the combustion chamber);. (ii) You have initiated the closure requirements of subpart G, parts 264 or 265 of this chapter;. (iii) You begin complying with the requirements of all other applicable standards of this part (Part 63); and. (iv) You notify the Administrator in writing that you are no longer an affected source under this subpart (Subpart EEE).	You are no longer subject to this subpart (Subpart EEE).
(2) You are a research, development, and demonstration source.	You operate for no longer than one year after first burning hazardous waste (Note that the Administrator can extent this one-year restriction on a case-by-case basis upon your written request documenting when you first burned hazardous waste and the justification for needing additional time to perform research, development, or demonstration operations.).	You are not subject to this subpart (Subpart EEE). This exemption applies even if there is a hazardous waste combustor at the plant site that is regulated under this subpart. You still, however, remain subject to § 270.65 of this chapter.
(3) The only hazardous wastes you burn are exempt from regulation under § 266.100(c) of this chapter.	.....	You are not subject to the requirements of this subpart (Subpart EEE).

* * * * *

5. Section 63.1201 is amended by revising the definition of *Automatic waste feed cutoff (AWFCO) system* in paragraph (a) to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Automatic waste feed cutoff (AWFCO) system means a system comprised of cutoff valves, actuator, sensor, data manager, and other necessary components and electrical circuitry designed, operated and maintained to stop the flow of hazardous waste to the combustion unit automatically and immediately (except as provided by § 63.1206(c)(3)(viii)) when any operating requirement is exceeded.

* * * * *

6. Section 63.1203 is amended by revising paragraphs (a)(3), (a)(4), (a)(5)(i), and (b)(5)(i) and removing paragraph (e) to read as follows:

§ 63.1203 What are the standards for hazardous waste incinerators?

(a) * * *

(3) Lead and cadmium in excess of 240 μg/dscm, combined emissions, corrected to 7 percent oxygen;

(4) Arsenic, beryllium, and chromium in excess of 97 μg/dscm, combined emissions, corrected to 7 percent oxygen;

(5) * * *

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

* * * * *

(b) * * *

(5) * * *

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you must also

document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

* * * * *

7. Section 63.1204 is amended by revising paragraphs (a)(5)(i)(A), (a)(5)(ii)(B), and (b)(5)(i)(A)(*l*) and by removing and reserving paragraph (g) to read as follows:

§ 63.1204 What are the standards for hazardous waste burning cement kilns?

(a) * * *

(5) * * *

(i) * * *

(A) Carbon monoxide in the by-pass duct or mid-kiln gas sampling system in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(i)(B) of this section, you must also document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons in the by-pass duct or mid-kiln gas sampling system do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

* * * * *

(ii) * * *

(B) Carbon monoxide in the main stack in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii)(A) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons in the main stack do not exceed 20 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(A) * * *

(*1*) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(i)(A)(2) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 10 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

* * * * *

8. Section 63.1205 is amended by revising paragraph (a)(5)(i); by redesignating paragraph (b)(5) introductory text as paragraph (b)(5)(i) and revising it; and by removing paragraph (e), to read as follows:

§ 63.1205 What are the standards for hazardous waste burning lightweight aggregate kilns?

(a) * * *

(5) * * *

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (a)(5)(ii) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 20 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

* * * * *

(b) * * *

(5) *Carbon monoxide and hydrocarbons.* (i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen. If you elect to comply with this carbon monoxide standard rather than the hydrocarbon standard under paragraph (b)(5)(ii) of this section, you also must document that, during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7), hydrocarbons do not exceed 20 parts per million by volume during those runs, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

* * * * *

9. Section 63.1206 is amended by revising paragraph (b)(5)(i) introductory text, (b)(5)(i)(C)(1), (b)(5)(iii), and (c)(6)(i) to read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

* * * * *

(b) * * *

(5) *Changes in design, operation, or maintenance.* (i) *Changes that may adversely affect compliance.* If you plan to change (as defined in paragraph (b)(5)(iii) of this section) the design, operation, or maintenance practices of the source in a manner that may adversely affect compliance with any emission standard that is not monitored with a CEMS:

* * * * *

(C) * * *

(*1*) Except as provided by paragraph (b)(5)(i)(C)(2) of this section, after the change and prior to submitting the notification of compliance, you must not burn hazardous waste for more than a total of 720 hours (renewable at the discretion of the Administrator) and only for the purposes of pretesting or comprehensive performance testing. Pretesting is defined at § 63.1207(h)(2)(i) and (ii).

* * * * *

(iii) *Definition of ''change.''* For purposes of paragraph (b)(5) of this section, ''change'' means any change in design, operation, or maintenance practices that were documented in the comprehensive performance test plan, Notification of Compliance, or startup, shutdown, and malfunction plan.

* * * * *

(c) * * *

(6) *Operator training and certification.* (i) You must establish training programs for all categories of personnel whose activities may reasonably be expected to directly affect emissions of hazardous air pollutants from the source. Such persons include, but are not limited to, chief facility operators, control room operators, continuous monitoring system operators, persons that sample and analyze feedstreams, persons that manage and charge feedstreams to the combustor, persons that operate emission control devices, and ash and waste handlers. Each training program shall be of a technical level commensurate with the person's job duties specified in the training manual. Each commensurate training program shall require an examination to be administered by the instructor at the end of the training course. Passing of this test shall be deemed the ''certification'' for personnel, except that for control room operators and shift supervisors, the training and certification program shall be as specified in paragraphs (c)(6)(iii) and (iv) of this section.

* * * * *

10. Section 63.1207 is amended by revising paragraphs (f)(1)(ii)(A), (f)(1)(ii)(B), (f)(1)(ix), (f)(1)(x), (f)(1)(xi), (f)(1)(xii), (h)(2) introductory text, and (j)(1)(i); redesignating paragraph (f)(1)(xiii) as (f)(1)(xxvi); and adding paragraphs (f)(1)(xiii) through (f)(1)(xxv), to read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) An identification of such organic hazardous air pollutants that are present in the feedstream, except that you need not analyze for organic hazardous air pollutants that would reasonably not be expected to be found in the feedstream. You must identify any constituents you exclude from analysis and explain the basis for excluding them. You must conduct the feedstream analysis according to § 63.1208(b)(8).;

(B) An approximate quantification of such identified organic hazardous air pollutants in the feedstreams, within the precision produced by the analytical procedures of § 63.1208(b)(8); and

* * * * *

(ix) A determination of the hazardous waste residence time as required by § 63.1206(b)(11);

(x) If you are requesting to extrapolate metal feedrate limits from comprehensive performance test levels under §§ 63.1209(l)(1)(i) or 63.1209(n)(2)(ii))(A):

(A) A description of the extrapolation methodology and rationale for how the approach ensures compliance with the emission standards;

(B) Documentation of the historical range of normal (*i.e.*, other than during compliance testing) metals feedrates for each feedstream;

(C) Documentation that the level of spiking recommended during the performance test will mask sampling and analysis imprecision and inaccuracy to the extent that extrapolation of feedrates and emission rates from performance test data will be as accurate and precise as if full spiking were used;

(xi) If you do not continuously monitor regulated constituents in natural gas, process air feedstreams, and feedstreams from vapor recovery systems under § 63.1209(c)(5), you must include documentation of the expected levels of regulated constituents in those feedstreams;

(xii) Documentation justifying the duration of system conditioning required to ensure the combustor has achieved steady-state operations under performance test operating conditions, as provided by paragraph (g)(1)(iii) of this section;

(xiii) For cement kilns with in-line raw mills, if you elect to use the emissions averaging provision of § 63.1204(d), you must notify the Administrator of your intent in the initial (and subsequent) comprehensive performance test plan, and provide the information required under § 63.1204(d)(ii)(B).

(xiv) For preheater or preheater/precalciner cement kilns with dual stacks, if you elect to use the emissions averaging provision of § 63.1204(e), you must notify the Administrator of your intent in the initial (and subsequent) comprehensive performance test plan, and provide the information required under § 63.1204(e)(2)(iii)(A).

(xv) For incinerators and lightweight aggregate kilns equipped with a baghouse, you must submit the baghouse operation and maintenance plan required under § 63.1206(c)(7)(ii) with the initial comprehensive performance test plan.

(xvi) If you are not required to conduct performance testing to document compliance with the mercury, semivolatile metal, low volatile metal, or hydrochloric acid/chlorine gas emission standards under paragraph (m) of this section, you must include with the comprehensive performance test plan documentation of compliance with the provisions of that section.

(xvii) If you propose to use a surrogate for measuring or monitoring gas flowrate, you must document in the comprehensive performance test plan that the surrogate adequately correlates with gas flowrate, as required by paragraph (m)(7) of this section, and § 63.1209(j)(2), (k)(3), (m)(2)(i), (m)(5)(i), and (o)(2)(i).

(xviii) You must submit an application to request alternative monitoring under § 63.1209(g)(1) not later than with the comprehensive performance test plan, as required by § 63.1209(g)(1)(iii)(A).

(xix) You must document the temperature location measurement in the comprehensive performance test plan, as required by §§ 63.1209(j)(1)(i) and 63.1209(k)(2)(i).

(xx) If your source is equipped with activated carbon injection, you must document in the comprehensive performance test plan:

(A) The manufacturer specifications for minimum carrier fluid flowrate or pressure drop, as required by § 63.1209(k)(6)(ii); and

(B) Key parameters that affect carbon adsorption, and the operating limits you establish for those parameters based on the carbon used during the performance test, if you elect not to specify and use the brand and type of carbon used during the comprehensive performance test, as required by § 63.1209(k)(6)(iii).

(xxi) If your source is equipped with a carbon bed system, you must include in the comprehensive performance test plan:

(A) A recommended schedule for conducting a subsequent performance test to document compliance with the dioxin/furan and mercury emission standards if you use manufacturer specifications rather than actual bed age at the time of the test to establish the initial limit on bed age, as required by § 63.1209(k)(7)(i)(C); and

(B) Key parameters that affect carbon adsorption, and the operating limits you establish for those parameters based on the carbon used during the performance test, if you elect not to specify and use the brand and type of carbon used during the comprehensive performance test, as required by § 63.1209(k)(7)(ii).

(xxii) If you feed a dioxin/furan inhibitor into the combustion system, you must document in the comprehensive performance test plan key parameters that affect the effectiveness of the inhibitor, and the operating limits you establish for those parameters based on the inhibitor fed during the performance test, if you elect not to specify and use the brand and

type of inhibitor used during the comprehensive performance test, as required by § 63.1209(k)(9)(ii).

(xxiii) If your source is equipped with a wet scrubber and you elect to monitor solids content of the scrubber liquid manually but believe that hourly monitoring of solids content is not warranted, you must support an alternative monitoring frequency in the comprehensive performance test plan, as required by § 63.1209(m)(1)(i)(B)(*1*)(*i*).

(xxiv) If your source is equipped with a particulate matter control device other than a wet scrubber, baghouse, or electrostatic precipitator, you must include in the comprehensive performance test plan:

(A) Documentation to support the operating parameter limits you establish for the control device, as required by § 63.1209(m)(1)(iv)(A)(*4*); and

(B) Support for the use of manufacturer specifications if you recommend such specifications in lieu of basing operating limits on performance test operating levels, as required by § 63.1209(m)(1)(iv)(D).

(xxv) If your source is equipped with a dry scrubber to control hydrochloric acid and chlorine gas, you must document in the comprehensive performance test plan key parameters that affect adsorption, and the limits you establish for those parameters based on the sorbent used during the performance test, if you elect not to specify and use the brand and type of sorbent used during the comprehensive performance test, as required by § 63.1209(o)(4)(iii)(A); and

* * * * *

(h) * * *

(2) Current operating parameter limits are also waived during pretesting prescribed in the approved test plan prior to comprehensive performance testing for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the Administrator). Pretesting means:

* * * * *

(j) * * *

(1) * * *

(i) Within 90 days of completion of a comprehensive performance test, you must postmark a Notification of Compliance documenting compliance or noncompliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under § 63.1209.

* * * * *

11. Section 63.1209 is amended by revising the word ''standards'' in the first sentence of paragraph (a)(7) to read ''standard'' and by revising paragraphs (a)(1)(i), (a)(1)(iii), (a)(6)(iii)(A), (b)(2) introductory text, (l)(1), (l)(3), (l)(4), (m)(3), (n)(2)(i)(A), (B) and (C), (n)(4), and (o)(1) to read as follows:

§ 63.1209 What are the monitoring requirements?

(a) * * *

(1)(i) You must use either a carbon monoxide or hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standard under this subpart. You must also use an oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen.

* * * * *

(iii) You must install, calibrate, maintain, and operate a particulate matter CEMS to demonstrate and monitor compliance with the particulate matter standards under this subpart. However, compliance with the requirements in this section to install, calibrate, maintain and operate the PM CEMS is not required until such time that the Agency promulgates all performance specifications and operational requirements applicable to PM CEMS.

* * * * *

(6) * * *

(iii) *Calculation of rolling averages when the hazardous waste feed is cutoff.* (A) Except as provided by paragraph (a)(6)(iii)(B) of this section, you must continue monitoring carbon monoxide and hydrocarbons when the hazardous waste feed is cutoff if the source is operating. You must not resume feeding hazardous waste if the emission levels exceed the standard.

* * * * *

(b) * * *

(2) Except as specified in paragraphs (b)(2)(i) and (ii) of this section, you must install and operate continuous monitoring systems other than CEMS in conformance with § 63.8(c)(3) that requires you, at a minimum, to comply with the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system:

* * * * *

(l) * * *

(1) Feedrate of total mercury. You must establish a 12-hour rolling average limit for the total feedrate of mercury in all feedstreams as the average of the test run averages, unless mercury feedrate limits are extrapolated from performance test feedrate levels under the following provisions.

* * * * *

(3) Activated carbon injection. If your combustor is equipped with an activated carbon injection system, you must establish operating parameter limits prescribed by paragraph (k)(6) of this section.

(4) Activated carbon bed. If your combustor is equipped with a carbon bed system, you must establish operating parameter limits prescribed by paragraph (k)(7) of this section.

* * * * *

(m) * * *

(3) Maximum ash feedrate. Owners and operators of hazardous waste incinerators must establish a maximum ash feedrate limit as the average of the test run averages.

* * * * *

(n) * * *

(2) * * *

(i) * * *

(A) You must establish a 12-hour rolling average limit for the feedrate of cadmium and lead, combined, in all feedstreams as the average of the test run averages;

(B) You must establish a 12-hour rolling average limit for the feedrate of arsenic, beryllium, and chromium, combined, in all feedstreams as the average of the test run averages; and

(C) You must establish a 12-hour rolling average limit for the feedrate of arsenic, beryllium, and chromium, combined, in all pumpable feedstreams as the average of the test run averages. Dual feedrate limits for both pumpable and total feedstreams are not required, however, if you base the total feedrate limit solely on the feedrate of pumpable feedstreams.

* * * * *

(4) Maximum total chlorine and chloride feedrate. You must establish a 12-hour rolling average limit for the feedrate of total chlorine and chloride in all feedstreams as the average of the test run averages.

* * * * *

(o) * * *

(1) Feedrate of total chlorine and chloride. You must establish a 12-hour rolling average limit for the total feedrate of chlorine (organic and inorganic) in all feedstreams as the average of the test run averages.

* * * * *

12. Section 63.1210 is amended by revising paragraphs (b)(1)(iv) introductory text and (c)(2) to read as follows:

§ 63.1210 What are the notification requirements?

* * * * *

(b) * * *

(1) * * *

(iv) If you do not intend to comply, but will not stop burning hazardous waste by October 1, 2001, a certification that:

* * * * *

(c) * * *

(2) You must submit a summary of the meeting, along with the list of attendees and their addresses, developed under paragraph (c)(1) of this section, and copies of any written comments or materials submitted at the meeting, to the Administrator as part of the final NIC, in accordance with paragraph (b)(1)(iii) of this section.

* * * * *

13. Section 63.1211 is amended by revising the table in paragraph (c) to read as follows:

§ 63.1211 What are the recordkeeping and reporting requirements?

* * * * *

(c) * * *

Reference	Document, data, or information
63.1201(a), 63.10(b) and (c)	General. Information required to document and maintain compliance with the regulations of this Subpart EEE, including data recorded by continuous monitoring systems (CMS), and copies of all notifications, reports, plans, and other documents submitted to the Administrator.
63.1211(d)	Documentation of compliance.
63.1206(c)(3)(vii)	Documentation and results of the automatic waste feed cutoff operability testing.
63.1209(c)(2)	Feedstream analysis plan.
63.1204(d)(3)	Documentation of compliance with the emission averaging requirements for cement kilns with in-line raw mills.
63.1204(e)(3)	Documentation of compliance with the emission averaging requirements for preheater or preheater/precalciner kilns with dual stacks.
63.1206(b)(1)(ii)(B)	If you elect to comply with all applicable requirements and standards promulgated under authority of the Clean Air Act, including Sections 112 and 129, in lieu of the requirements of this Subpart EEE when not burning hazardous waste, you must document in the operating record that you are in compliance with those requirements.
63.1206(c)(2)	Startup, shutdown, and malfunction plan.
63.1206(c)(3)(v)	Corrective measures for any automatic waste feed cutoff that results in an exceedance of an emission standard or operating parameter limit.
63.1206(c)(4)(ii)	Emergency safety vent operating plan.
63.1206(c)(4)(iii)	Corrective measures for any emergency safety vent opening.
63.1206(c)(5)(ii)	Method used for control of combustion system leaks.
63.1206(c)(6)	Operator training and certification program.
63.1206(c)(7)(i)(D)	Operation and maintenance plan.
63.1209(k)(6)(iii), 63.1209(k)(7)(ii), 63.1209(k)(9)(ii), 63.1209(o)(4)(iii).	Documentation that a substitute activated carbon, dioxin/furan formation reaction inhibitor, or dry scrubber sorbent will provide the same level of control as the original material.

* * * * *

14. Section 63.1212 is amended by revising paragraphs (a)(2), (b)(1), and (b)(2) introductory text to read as follows:

§ 63.1212 What are the other requirements pertaining to the NIC and associated progress reports?

(a) * * *

(2) An authorized representative is the same as a ''responsible official'' as defined under § 63.2.

(b) * * *

(1) If you begin to burn hazardous waste after September 30, 1999 but prior to June 30, 2000 you must comply with the requirements of §§ 63.1206(a)(3), 63.1210(b) and (c), 63.1211(b), and paragraph (a) of this section, and associated time frames for public meetings and document submittals.

(2) If you intend to begin burning hazardous waste after June 30, 2000 you must comply with the requirements of §§ 63.1206(a)(3), 63.1210(b) and (c), 63.1211(b), and paragraph (a) of this section prior to burning hazardous waste. In addition:

* * * * *

15. The appendix to subpart EEE of part 63 is amended by revising sections 1.1, and 2.8, redesignating sections c and d as 3 and 4, respectively, by revising the header for section 5, and by revising section 6.5.1 to read as follows:

Appendix to Subpart EEE of Part 63—Quality Assurance Procedures for Continuous Emissions Monitors Used for Hazardous Waste Combustors

* * * * *

1.1 Applicability. These quality assurance requirements are used to evaluate the effectiveness of quality control (QC) and quality assurance (QA) procedures and the quality of data produced by continuous emission monitoring systems (CEMS) that are used for determining compliance with the emission standards on a continuous basis as specified in the applicable regulation. The QA procedures specified by these requirements represent the minimum requirements necessary for the control and assessment of the quality of CEMS data used to demonstrate compliance with the emission standards provided under this subpart EEE of part 63. Owners and operators must meet these minimum requirements and are encouraged to develop and implement a more extensive QA program. These requirements supersede those found in part 60, Appendix F, of this chapter. Appendix F does not apply to hazardous waste-burning devices.

* * * * *

2.8 Rolling Average. The average emissions, based on some (specified) time period, calculated every minute from a one-minute average of four measurements taken at 15-second intervals.

* * * * *

5. Performance Evaluation for CO, O_2, and HC CEMS

* * * * *

6.5.1 *One-Minute Average for CO and HHC CEMS.* One-minute averages are the arithmetic average of the four most recent 15-second observations and must be calculated using the following equation:

$$\bar{c} = \sum_{i=1}^{4} \frac{c_i}{4}$$

Where:

$\bar{c}$ = the one minute average

c_i = a fifteen-second observation from the CEM

Fifteen second observations must not be rounded or smoothed. Fifteen-second observations may be disregarded only as a result of a failure in the CEMS and allowed in the source's quality

assurance plan at the time of the CEMS failure. One-minute averages must not be rounded, smoothed, or disregarded.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

16. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

17. Section 261.38 is amended by adding paragraph (c)(2)(iv) to read as follows:

§ 261.38 Comparable/Syngas Fuel Exclusion.

* * * * *

(c) * * *

(2) * * *

(iv) Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

18. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

19. Section 270.42 is amended by revising paragraph (j)(1) to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(j) * * *

(1) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210(b) and (c) before a permit modification can be requested under this section.

* * * * *

[FR Doc. 00–16515 Filed 7–7–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000623193–0193–01; I.D. 060800D]

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Catch in the Bering Sea and Aleutian Islands

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

ACTION: Final 2000 harvest specifications; technical amendment.

SUMMARY: NMFS issues a technical amendment to the Final 2000 Harvest Specifications for Groundfish for the Bering Sea and Aleutian Islands (BSAI). A revision to Table 7 of the Final 2000 Harvest Specifications, which is prohibited species bycatch allowances for the BSAI trawl and non-trawl groundfish fisheries, is necessary to reflect reduced prohibited species bycatch allowances under Amendment 57 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective June 15, 2000, through 2400 hrs A.l.t. December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the FMP prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Council, at its December 1999 meeting, recommended that the Final 2000 Harvest Specifications include prohibited species bycatch allowances proportionally reduced to reflect reduced prohibited species catch (PSC) limits under pending Amendment 57. Because the Final Harvest Specifications for Groundfish of the BSAI (65 FR 8282, February 18, 2000) were issued prior to Amendment 57 being approved by NMFS and implemented by regulations, the specifications set forth prohibited species bycatch allowances for the BSAI trawl fisheries based on the following pre-FMP Amendment 57 PSC limits: Pacific halibut, 3,775 mt; Zone 1 red king crab, 100,000 animals; *Chionoecetes* (*C.*) *opilio*, 4,500,000 animals; *C. bairdi* Zone 1, 900,000; and *C. bairdi* Zone 2, 2,550,000 animals.

Under the regulations implementing Amendment 57 to the FMP (65 FR 31105, May 16, 2000), which became effective June 15, 2000, the 2000 Pacific halibut and crab PSC limits for the BSAI trawl fisheries were reduced to the following amounts: Pacific halibut, 3,675 mt; Zone 1 red king crab, 97,000 animals; *C. opilio*, 4,350,000 animals; *C. bairdi* Zone 1,830,000; and *C. bairdi* Zone 2, 2,520,000 animals. The corresponding prohibited species bycatch allowances were reduced proportionally.

This technical amendment revises Table 7 of the Final 2000 Harvest Specifications for Groundfish of the BSAI accordingly to read as follows:

TABLE 7.—PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES [1]

[All amounts are in metric tons]

	Prohibited Species and Zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1	*C. opilio* (animals) COBLZ [2]	*C. bairdi* (animals)	
					Zone 1	Zone 2
Trawl Fisheries:						
Yellowfin sole	886	169	11655	2,876,579	288,750	1,514,683
January 20–March 31	262					
April 1–May 20	196					
May 21–July 3	48					
July 4–December 31	380					
Rocksole/oth. flat/flat sole [3]	779	24	42,090	869,934	309,326	504,894
January 20–March 31	448					
April 1–July 31	64					
July 4–December 31	167					
Turbot/sablefish/arrowtooth [4]	.....	11	.....	41,043		

TABLE 7.—PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES [1]—Continued

[All amounts are in metric tons]

	Prohibited Species and Zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1	*C. opilio* (animals) COBLZ [2]	*C. bairdi* (animals)	
					Zone 1	Zone 2
Rockfish (July 4–December 31) [5]	69	9	.....	41,043	.....	10,024
Pacific cod	1,434	24	11,656	123,529	154,856	275,758
Pollock/Atka/other [6]	232	1,616	1,660	71,622	14,818	25,641
RKC savings subarea [3]	.....	22,665	.....	.....	.....	.....
Total Trawl PSC	3,400	1,853	89,725	4,023,750	767,750	2,331,000
Non-Trawl Fisheries:						
Pacific cod—Total	748					
Jan. 1–April 30 [7]	7457					
May 1–August 31	0					
Sept. 1–Dec. 31	291					
Other non-trawl—Total	84					
May 1–December 31	84					
Groundfish pot & jig	Exempt					
Sablefish hook-&-line	Exempt					
Total Non-Trawl	833					
PSQ Reserve [8]	343	.....	7,275	326,250	62,250	189,000
Grand Total	4,675	1,853	97,000	4,350,000	830,000	2,520,000

[1] Refer to § 679.2 for definitions of areas.
[2] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at § 679.21(e)(7)(iv)(B).
[3] The Council at its December 1999 meeting recommended limiting red king crab for trawl fisheries within the RKCSS to 35 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)).
[4] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[5] The Council at its December 1999 meeting recommended apportioning the rockfish PSC amounts from July 4–December 31, to prevent fishing for rockfish before July 4, 2000.
[6] Pollock, Atka mackerel, and ''other species'' fishery category.
[7] Any unused halibut PSC from the first trimester may be rolled over into the third trimester.
[8] With the exception of herring, 7.5 percent of each PSC limit is allocated to the multi-species CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

Classification

Because this technical amendment merely revises a table in the specifications to reflect new allowances under a previous final rule, pursuant to 5 U.S.C. 5539(b)(B), the Assistant Administrator for Fisheries, NOAA, finds, for good cause, that it is unnecessary to provide prior notice and opportunity for public comment in that no useful purpose would be served.

In addition, because this is a non-substantive rule, under 5 U.S.C. 553(d), a 30-day delay in effectiveness is not required.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 533, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: July 3, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17269 Filed 7–7–00; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 65, No. 132
Monday, July 10, 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 1 and 2

[Docket No. 00–005–1]

Animal Welfare; Definitions for and Reporting of Pain and Distress

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Request for comments.

SUMMARY: We are considering several changes to the Animal Welfare regulations to promote the humane treatment of live animals used in research, testing, and teaching and to improve the quality of information we report to Congress concerning animal pain and distress. Specifically, we are considering adding a definition for the term ''distress.'' Although this term is used throughout the Animal Welfare regulations, it is not defined. The addition of such a definition would clarify what we consider to be ''distress'' and could help assist research facilities to recognize and minimize distress in animals in accordance with the Animal Welfare Act (AWA).

We are also considering replacing or modifying the system we use to classify animal pain and distress. Professional standards regarding the recognition and relief of animal pain and distress have changed significantly since we established our classification system. Some biomedical research professionals and animal welfare advocates believe our classification system is outdated and inadequate. A different categorization system could produce data that more accurately depict the nature of animal pain or distress and provide a better tool to measure efforts made to minimize animal pain and distress at research facilities.

We are soliciting public comments on the changes we are considering. We are also interested in obtaining information on specific pain and distress classification systems other than the one we now use.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 8, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–005–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–005–1. You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Jodie Kulpa, Staff Veterinarian, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements regarding the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA). Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in title 9, parts 1, 2, and 3 (referred to below as the regulations). Part 1 contains definitions for terms used in parts 2 and 3. Part 2 contains general requirements for regulated parties. Part 3 contains specific requirements for the care and handling of certain animals.

We are soliciting comments on an approach, discussed below, for amending the regulations by defining ''distress'' in part 1 and by modifying or replacing the animal pain and distress classification system in part 2.

Definition for Distress

In the regulations, we define a ''painful procedure'' as any procedure that would reasonably be expected to cause more than slight or momentary pain or distress in a human being to which that procedure was applied. Although we use the term ''distress'' in this definition and elsewhere in the regulations, there is no definition for distress in the regulations. We are considering adding such a definition because of requests from the biomedical research community and animal advocacy groups. These parties have asked USDA to provide guidance on what is considered to be distress in a procedure involving research animals in order to improve recognition of animal distress, to classify and report it more accurately, and to create a heightened awareness of the regulations' requirement to minimize animal distress and pain.

Pain and Distress Classification System

Section 13(a)(7)(B) of the AWA requires research facilities to annually provide ''information on procedures likely to produce pain or distress in any animal.'' In accordance with the AWA, the regulations at § 2.36 require facilities that use or intend to use live animals for research, tests, experiments, or teaching to submit an annual report to the Animal Care Regional Director for the State where the facility is located. Among other things, the report must state the common names and the numbers of animals upon which teaching, experiments, research, surgery, or tests were conducted involving: (1) No pain, distress, or use of pain-relieving drugs; (2) accompanying pain or distress to the animals and for which appropriate anesthetic, analgesic, or tranquilizing drugs were used; and (3) accompanying pain or distress to the animals and for which the use of appropriate anesthetic, analgesic, or tranquilizing drugs would have adversely affected the procedures, results, or interpretation of the teaching, research, experiments, surgery, or tests.

To provide these data, each research facility must assess the potential for animal pain or distress associated with the proposed procedures. This assessment is performed prospectively (*i.e.,* before the procedure) and typically forms the basis for the pain and distress report provided by the facility to USDA. The assessment, therefore, is an estimate based on professional judgment, knowledge, and experience, and the resulting report may or may not accurately reflect the conditions the animals actually experience. The research facility can, as an option, retrospectively (*i.e.,* during or after the procedure) assess the animal pain and distress observed and report these results. We do not know how often facilities perform retrospective reporting.

There is no provision in the current classification system to address some areas identified by the research community and animal advocacy groups. For example, the current system does not include a means to report:

- An assessment of the relative intensity or duration of pain or distress either observed in the animal or anticipated to be experienced by the animal;
- An assessment of the anticipated or observed efficacy of the pain- or distress-relieving agent provided to animals undergoing a painful or distressful procedure;
- A distinction between procedures causing animal pain and procedures causing animal distress;
- Animals that were prevented from experiencing pain or distress by the appropriate and effective use of pain- or distress-relieving methods or procedures (*e.g.,* well-anesthetized animals that undergo terminal surgery);
- Animals that did not experience pain or distress due to the appropriate and effective use of pain- or distress-relieving methods or procedures other than anesthetic, analgesic, or tranquilizing agents;
- Animals that experience unrelieved pain or distress for a reason other than that the use of anesthetic, analgesic, or tranquilizing drugs would have adversely affected the procedures, results, experiments, surgery, or tests; or
- Animals that experience pain or distress without having been used in a procedure (*e.g.,* illness in animals that have been genetically altered to develop disease).

We are aware of several alternative pain and distress classification systems. For example, the system adopted by the Canadian Council on Animal Care, ''Categories of Invasiveness in Animal Experiments,'' may be viewed on the Internet at http://www.ccac.ca/english/categ.htm. The system proposed by the Humane Society of the United States may be viewed on the Internet at http://hsus.org/programs/research/usda_proposed_scale.html.[1] Other classification systems, varying greatly in complexity, are in use in other countries, such as Switzerland and Sweden.

Modifying the current USDA system, in lieu of replacing it, could also be an option. This could involve replacing or redefining the existing categories to:

- Separately report pain and distress;
- Quantify pain and distress intensity and duration;
- Separately classify anesthetized or otherwise treated animals undergoing potentially painful procedures but not experiencing pain or distress; or
- Modify the system in other ways.

We invite your comments on adding a definition for distress to the regulations and replacing or modifying our animal pain and distress classification system. We are particularly interested in soliciting comments addressing the following questions:

1. Would adding a definition for distress to the regulations help institutions using animals for research, testing, or teaching better recognize, minimize, and report animal distress?
2. If a definition for distress is added to the regulations, what key elements should be included in that definition?
3. What are the benefits and limitations of our pain and distress classification system?
4. Should our animal pain and distress classification system be modified or replaced? If so, what specific modifications or alternate classification systems should we consider?
5. Should animal pain and distress be prospectively or retrospectively reported?

Written comments should be submitted within the 60-day comment period specified in this document (see **DATES** and **ADDRESSES**).

Executive Order 12866

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

[1] If you do not have access to the Internet, you may obtain a copy of the system adopted by Canadian Council on Animal Care or the system proposed by the Humane Society of the United States by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this document.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, this 3rd day of July 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–17280 Filed 7–7–00; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 54

[Docket No. PRM–54–1]

Union of Concerned Scientists; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Union of Concerned Scientists (petitioner). The petition has been docketed by the Commission and has been assigned Docket No. PRM–54–1. The petitioner requests that the NRC regulations governing requirements for renewal of operating licenses for nuclear power plants be amended to address potential concerns about aging degradation of liquid and gaseous radioactive waste systems. The petitioner believes the degradation from aging of piping and components of liquid and gaseous radioactive waste systems at nuclear power facilities may result in an increased probability and/or consequences from design and licensing bases events.

DATES: Submit comments by September 25, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Documents related to this action

are available for public inspection at the NRC Public Document Room (PDR) located at the Gelman Building, 2012 L Street, NW, Washington, DC 20555. Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 202–634–3273, or by email to *pdr@nrc.gov.*

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (*http://ruleforum.llnl.gov*). This site provides the availability to view and upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll Free: 1–800–368–5642 or E-mail: DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking dated May 3, 2000, submitted by the Union of Concerned Scientists (petitioner). The petitioner requests that the regulations governing renewal of operating licenses for nuclear power plants in 10 CFR parts 51 and 54 be amended to address potential concerns relating to degradation through aging of piping and components of liquid and gaseous radioactive waste systems at operating nuclear power plants. This petition was included as part of a document in which the petitioner details concerns related to the review of the license renewal application submitted by the owner of the Hatch Nuclear Plant. Specifically, the petitioner is concerned that the license renewal application for the Hatch facility has not addressed deficiencies it believes exists in the aging management of the liquid and gaseous radioactive waste (radwaste) systems. The petitioner concludes that the requirements pertaining to renewal of operating licenses for nuclear power plants do not adequately address degradation from aging of liquid and gaseous radioactive waste systems. The petitioner requests that the regulations in 10 CFR part 51 and part 54 be amended to clarify that liquid and gaseous radioactive waste systems must be covered by aging management programs during license renewal periods.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–54–1. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner states that in 10 CFR part 51, appendix B to subpart A, ''Environmental Effect of Renewing the Operating License of a Nuclear Power Plant,'' the NRC concluded that radiation exposures to the public and occupational exposures to workers during the license renewal term will continue at levels below regulatory limits. The petitioner believes that this conclusion is based on an assumption that the piping and components of the liquid and gaseous radioactive waste systems at nuclear power plants do not experience greater failure rates during the license renewal term.

Using the case of a recent license renewal application, the petitioner cites the Hatch Nuclear Plant as an example in contending that the plant is being operated outside its design and licensing bases because the material condition of piping and components of the liquid (Contention No. 1) and gaseous (Contention No. 2) radioactive waste systems are not being properly inspected and maintained. In its request for a generic communication by the NRC to all nuclear power plant owners about potential aging degradation of liquid and gaseous radioactive waste systems, the petitioner indicates that the Millstone facility received an Information Notice in 1979 regarding liquid radwaste system problems that the petitioner believes was ignored. The petitioner notes that in 1996 the Millstone facility received another Information Notice also regarding degradation problems with the liquid radwaste system.

The petitioner believes that from its review of the license renewal applications submitted by the owners of the Calvert Cliffs, Oconee, and Hatch facilities, it appears that 10 CFR 54.4(a)(1)(iii) has been interpreted to exclude the liquid and gaseous radioactive waste systems from aging management consideration. The petitioner requests that NRC amend 10 CFR parts 51 and 54 to clarify that the liquid and gaseous radioactive waste systems must be covered by aging management programs during the license renewal term. The petitioner believes that regulations imposing aging management for these systems are necessary to ensure that these systems do not experience greater failure rates that could result in an increased probability and/or consequences from design bases events.

The Petitioner's Conclusions

The petitioner has concluded that the NRC requirements governing renewal of operating licenses of nuclear power facilities do not adequately address degradation that may result from aging of liquid and gaseous radioactive waste systems. The petitioner has also concluded that the degradation by aging of these systems may result in an increased probability of adverse consequences from design and licensing bases events. The petitioner requests that the regulations in 10 CFR part 54 and part 51, if appropriate, be amended to clarify that liquid and gaseous radwaste systems must be covered by aging management programs during the license renewal term of an operating nuclear power facility.

Dated at Rockville, Maryland, this 3rd day of July, 2000.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 00–17340 Filed 7–7–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–365–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes Powered by Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes powered by Pratt & Whitney engines. This proposal would require modification of the nacelle strut and wing structure. This action is necessary to prevent fatigue cracking in primary

strut structure and consequent reduced structural integrity of the strut. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 24, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–365–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 99–NM–365–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: James Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–365–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–365–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the airplane manufacturer has accomplished a structural reassessment of the damage tolerance capabilities of the Boeing Model 767 series airplane powered by Pratt & Whitney engines. This reassessment indicates that the actual operational loads applied to the nacelle strut and wing structure are higher than the analytical loads that were used during the initial design. Subsequent analysis and service history, which includes numerous reports of fatigue cracking on certain strut and wing structure, indicate that fatigue cracking can occur on the primary strut structure before an airplane reaches its design service objective of 20 years or 50,000 flight cycles. Analysis also indicates that such cracking, if it were to occur, would grow at a much greater rate than originally expected. Fatigue cracking in primary strut structure would result in reduced structural integrity of the strut.

Other Relevant Rulemaking

This proposed AD is related to AD 94–11–02, amendment 39–8918 (59 FR 27229, May 26, 1994), which is applicable to all Boeing Model 767 series airplanes, and requires repetitive detailed visual and eddy current inspections to detect cracks of certain midspar fuse pins, and replacement of any cracked midspar fuse pin with a new fuse pin.

This proposed AD also is related to AD 99–07–06, amendment 39–11091 (64 FR 14578, March 26, 1999), which is applicable to certain Boeing Model 767 series airplanes, and requires repetitive inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, and follow-on actions, if necessary.

Accomplishment of the actions required by this AD would terminate the repetitive inspections required by AD 94–11–02 and AD 99–07–06.

Explanation of Relevant Service Information

Boeing recently has developed a modification of the strut-to-wing attachment structure installed on Model 767 series airplanes powered by Pratt & Whitney engines. This modification significantly improves the load-carrying capability and durability of the strut-to-wing attachments. Such improvement also will substantially reduce the possibility of fatigue cracking and corrosion developing in the attachment assembly.

The FAA has reviewed and approved Boeing Service Bulletin 767–54–0080, dated October 7, 1999, which describes procedures for modification of the nacelle strut and wing structure. The modification consists of replacing many of the significant load-bearing components of the strut (*e.g.,* the side link fittings assemblies, the midspar fittings, the side load fittings, certain fuse bolt assemblies, etc.) with improved components.

The service bulletin contains a formula for calculating an optional compliance threshold for the specified modification. This formula is intended to be used as an alternative to the 20-year calendar threshold specified in the service bulletin.

In addition, Table 2 of the service bulletin also identifies six related service bulletin modifications that must be accomplished before or at the same time as the modification specified in Boeing Service Bulletin 767–54–0080:

- *Boeing Service Bulletin 767–53–0069:* The FAA has reviewed and approved Boeing Service Bulletin 767–53–0069, Revision 1, dated January 29, 1998, which describes procedures for replacement of the existing midspar fuse pins with new higher-strength fuse pins; installation of new higher-strength tension bolts and radius fillers in the side load fittings and backup support structure; and replacement of the existing fasteners located in the front

spar and rib number eight rib post with new higher-strength fasteners.

• *Boeing Service Bulletin 767–54–0083:* The FAA has reviewed and approved Boeing Service Bulletin 767–54–0083, dated September 17, 1998, which describes procedures for replacement of the upper link with a new, improved part that will increase the strength and durability of the upper link installation. That service bulletin also describes procedures for modification of a wire support bracket attached to the upper link.

• *Boeing Service Bulletin 767–54–0088:* The FAA has reviewed and approved Boeing Service Bulletin 767–54–0088, Revision 1, dated July 29, 1999, which describes procedures for replacement of the upper link fuse pin and aft pin with new, improved pins that will increase the strength and durability of the upper link installation.

• *Boeing Service Bulletin 767–54A0094:* The FAA has reviewed and approved Boeing Service Bulletin 767–54A0094, Revision 1, dated September 16, 1999, which describes procedures for repetitive detailed visual inspections of the one-piece diagonal brace lugs to detect cracking, and installation of a new three-piece diagonal brace or rework of the existing brace. Installation of the new three-piece diagonal brace would constitute terminating action for the repetitive inspections described in this bulletin.

• *Boeing Service Bulletin 767–57–0053:* The FAA has reviewed and approved Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999, which describes procedures for repetitive ultrasonic and eddy current inspections of the pitch load fitting lugs of the wing front spar for cracking, and rework of the fittings, if necessary.

• *Boeing Service Bulletin 767–29–0057:* The FAA has reviewed and approved Boeing Service Bulletin 767–29–0057, dated December 16, 1993, including Notice of Status Change NSC 1, dated November 23, 1994, which describes procedures for modification of the electrical wiring located in the aft fairing area of the strut and installation of wire support brackets on the strut bulkhead.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

Operators should note that, although Boeing Service Bulletin 767–54–0080 specifies that the manufacturer may be contacted for disposition of certain damage conditions that may be detected during accomplishment of the modification, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 233 airplanes of the affected design in the worldwide fleet. The FAA estimates that 76 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 708 work hours per airplane to accomplish the proposed modification of the nacelle strut and wing structure described in Boeing Service Bulletin 767–54–0080, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $3,228,480, or $42,480 per airplane.

It would take approximately 106 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 767–53–0069, Revision 1, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $483,360, or $6,360 per airplane.

It would take approximately 1 work hour per airplane to accomplish the actions described in Boeing Service Bulletin 767–54–0083, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $4,560, or $60 per airplane.

It would take approximately 2 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 767–54–0088, Revision 1, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $9,120, or $120 per airplane.

It would take approximately 20 work hours per airplane to accomplish the proposed actions described in Boeing Service Bulletin 767–54A0094, Revision 1, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $91,200, or $1,200 per airplane.

It would take approximately 5 work hours per airplane to accomplish the proposed actions described in Boeing Service Bulletin 767–57–0053, Revision 2, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $22,800, or $300 per airplane.

It would take approximately 16 work hours per airplane to accomplish the proposed actions described in Boeing Service Bulletin 767–29–0057, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $72,960, or $960 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 99–NM–365–AD.

Applicability: Model 767 series airplanes powered by Pratt & Whitney engines, line numbers 1 through 663 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) 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 fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

Modifications

(a) When the airplane has reached the flight cycle threshold as defined by the flight cycle threshold formula on page 67 of Boeing Service Bulletin 767–54–0080, dated October 7, 1999, or within 20 years since the date of manufacture, whichever occurs first: Modify the nacelle strut and wing structure on both the left and right sides of the airplane, in accordance with the service bulletin. Use of the flight cycle threshold formula described on page 67 of the service bulletin is an acceptable alternative to the 20-year threshold, provided the conditions described in paragraphs 1 and 2 of page 67 have been met.

(b) Prior to or concurrently with the accomplishment of the modification of the nacelle strut and wing structure required by paragraph (a) of this AD; as specified in paragraph 1.D., Table 2, on page 8 of Boeing Service Bulletin 767–54–0080, dated October 7, 1999; accomplish the actions specified in Boeing Service Bulletins 767–53–0069, Revision 1, dated January 29, 1998; 767–54–0083, dated September 17, 1998; 767–54–0088, Revision 1, dated July 29, 1999; 767–54A0094, Revision 1, dated September 16, 1999; 767–57–0053, Revision 2, dated September 23, 1999; and 767–29–0057, dated December 16, 1993, including Notice of Status Change NSC 1, dated November 23, 1994; as applicable; in accordance with those service bulletins. Accomplishment of this paragraph constitutes terminating action for the repetitive inspections required by AD 94–11–02, amendment 39–8918, and AD 99–07–06, amendment 39–11091.

Note 2: Paragraph (b) of this AD specifies prior or concurrent accomplishment of Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999; however, Table 2, on page 8 of Boeing Service Bulletin 767–54–0080, dated October 7, 1999, specifies prior or concurrent accomplishment of the original issue of the service bulletin. Therefore, accomplishment of the applicable actions specified in Boeing Service Bulletin 767–57–0053, dated June 27, 1996, or Revision 1, dated October 31, 1996, prior to the effective date of this AD, is considered acceptable for compliance with the actions required by paragraph (b) of this AD.

Repair

(c) If any damage to airplane structure is found during the accomplishment of the modification required by paragraph (a) of this AD; and the service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on July 3, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17302 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

RIN 0651–AB19

Treatment of Unlocatable Application and Patent Files

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office is proposing to amend the rules of practice to provide for the replacement of application and patent files that cannot be located after a reasonable search. This change is designed to expedite the process of application and patent file reconstruction to minimize the processing or examination delays resulting when the Office cannot locate an application or patent file after a reasonable search.

DATES: *Comment Deadline Date:* To be ensured of consideration, written comments must be received on or before August 9, 2000. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: reconstruct.comments@uspto.gov. Comments may also be submitted by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231; or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Office of Patent

Legal Administration in the Office of the Deputy Commissioner for Patent Examination Policy, Room 3–C23 of Crystal Plaza 4, 2201 South Clark Place, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: http://www.uspto.gov). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr by telephone at (703) 308–6906, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr.

SUPPLEMENTARY INFORMATION: Over 330,000 patent applications (provisional and nonprovisional) were filed in the United States Patent and Trademark Office (Office) in fiscal year 1999. On occasion, an application or patent file cannot be located.

When an application or patent file cannot be located after a reasonable search and the application or patent file is necessary to conduct business before the Office, the Office will ''reconstruct'' the application or patent file. This involves placing a duplicate of the original application papers and duplicates of all of the correspondence between the Office and applicant or patentee in a new file wrapper. The Office currently (since the spring of 1997) uses its Patent Application Capture and Review (PACR) system to image scan the application papers submitted on the filing date of the application (except for any appendix or information disclosure statement) and to create an electronic database (PACR database) containing the Office's archival record of the original application papers (application papers were microfilmed prior to the spring of 1997). Thus, the Office can obtain a copy of the original application papers from its archival PACR database (or microfilm records). The Office, however, does not possess a duplicate copy of subsequent correspondence from the applicant or patentee (*e.g.*, applicant replies or other papers) concerning the application or patent. While the Office may have a copy of some Office correspondence (Office actions saved on a disc or computer hard drive), the Office often does not possess a complete copy of the Office correspondence concerning the application or patent (*e.g.*, paper-based forms or notices). Thus, to accurately reconstruct a file, the Office must request that the applicant or patentee either provide a complete copy of his or her record of the correspondence between the Office and the applicant or patentee, or produce his or her record of the correspondence between the Office and the applicant or patentee for the Office to copy.

In a pending application, the request that applicant provide a copy of (or produce) his or her record of the correspondence between the Office and the applicant does not, under current practice, require a reply within any set time period. This adds to the delay in processing and examination resulting from the inability to locate the application. To expedite the process of reconstructing the file of an application or patent file, the Office is proposing to amend the rules of practice to provide that the Office will now set a time period within which applicant or patentee must either provide a complete copy of his or her record of the correspondence between the Office and the applicant or patentee, or produce his or her record of the correspondence between the Office and the applicant or patentee for the Office to copy. Since it is axiomatic that the Office cannot continue to examine an application that it does not have a complete copy of, the failure to timely provide a copy of (or produce) his or her record of the correspondence between the Office and the applicant in a pending application will result in abandonment of the application.

Corresponding with an applicant or patentee in an abandoned application or patent is often difficult because address information is often not kept up-to-date in abandoned applications and patents. There are many good reasons for keeping correspondence information up-to-date in an abandoned application or patent. Some examples follow: Patent applicants and patent owners should keep the correspondence address and any fee address for the patent up-to-date to ensure that correspondence is mailed to applicant's or patentee's current address. In an abandoned application, the Office may attempt to communicate with applicant regarding a petition for access. If the address has not been updated, then the Office may not be able to consider applicant's views in deciding whether to release the application to a member of the public. The Customer Number Practice described in section 403 of the Manual of Patent Examining Procedure (7th ed. 1998) (Rev. 1, Feb. 2000)(MPEP) provides a procedure where a patent applicant or owner can easily change the correspondence address for a number of patents or patent applications. In addition, the ''Fee Address'' Indication Form (PTO/SB/47) (reproduced at MPEP 2595) enables a patent owner to complete one form to designate a single fee address for any number of patents or applications in which the issue fee has been paid.

When changing the address(es) associated with a patent, the patent owner should bear in mind that the Office has a number of addresses related to the patent: (1) An application correspondence address; (2) the return address for the assignment documents; and (3) the fee address for maintenance fee purposes. *See* MPEP 2540. The correspondence address is generally the address to which the patent application prosecution was sent and is often not up-to-date within a few years of patent issuance. As a result, the regulations related to reexamination proceedings require that a patent owner be served with a copy of a Reexamination Request at the Office of Enrollment and Discipline address for the attorney or agent of record, if there is an attorney or agent of record. *See* MPEP 2220. If there is no attorney or agent of record, the copy is required to be served upon the patent owner. *See* § 1.33(c). In the procedure to obtain a copy of a patent file set forth in this notice, the request will be directed to the correspondence address.

The Office is planning for full electronic submission of applications and related documents by fiscal year 2003. Once the Office is able to transition to a total Electronic File Wrapper environment, the inability to locate a paper application file (and the consequent need for the Office to obtain a copy of applicant's or patentee's record of the correspondence between the Office and the applicant or patentee) should no longer be a significant issue. However, this rule change is necessary to provide for the replacement of unlocatable application and patent files until the Office has completely transitioned to a total Electronic File Wrapper environment.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1 is proposed to be amended as follows:

Section 1.251 is proposed to be added to set forth a procedure for the reconstruction of the file of a patent application, patent, or other patent-related proceeding that cannot be located after a reasonable search.

Section 1.251(a) provides that in the event the Office cannot locate the file of an application, patent, or other patent-related proceeding after a reasonable search, the Office will notify the

applicant or patentee and set a time period within which the applicant or patentee must comply with § 1.251(b). The phrase ''an application'' applies to any type of application (national or international), and regardless of the status (pending or abandoned) of the application.

Section 1.251(b) provides that if an applicant or patentee has been given notice under § 1.251(a) that the Office cannot locate the file of a patent, application, or other patent-related proceeding after a reasonable search, applicant or patentee must do one of the following within the time period set in the notice: (1) Provide a copy of his or her record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, a list of such correspondence, and a statement that the copy is a complete and accurate copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding; or (2) produce his or her record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy, and provide a statement that the papers are a complete and accurate record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding. Any appendix or information disclosure statement submitted with an application is not contained in the Office's archival PACR database; therefore, the applicant or patentee must also provide a copy of any appendix or information disclosure statement submitted with the application.

Section 1.251(b) also provides for the situation in which an applicant or patentee does not possess a complete copy of the correspondence between the Office and the applicant or patentee. In such a situation, the applicant or patentee must provide: (1) A copy of his or her record (if any) of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding; (2) a list of such correspondence; and (3) a statement that applicant or patentee does not possess a complete copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding and that the copy is a complete and accurate copy of his or her record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding.

Thus, if the applicant or patentee possesses some (but not all) of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, the applicant or patentee is to reply by providing a copy of all the correspondence contained in applicant's or patentee's records. If applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, the applicant or patentee is to reply with a statement to that effect.

Section 1.251(c) provides that with regard to a pending application, the failure to provide a timely reply to such a notice will result in abandonment of the application.

Classification

Regulatory Flexibility Act

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. *See* 5 U.S.C. 603.

Executive Order 13132

This notice does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act

This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice has been submitted for approval by OMB under control number 0651–0031. The United States Patent and Trademark Office is resubmitting this information collection package to OMB for its review and approval because the changes in this notice affect the information collection requirements associated with that information collection package.

The title, description, and respondent description of this information collection is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the changes in this notice is to set forth the procedures for obtaining a copy of applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for an application, patent, or other proceeding when necessary to reconstruct the file of such application, patent, or other proceeding.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08/21–27/31/42/43/61/62/63/64/67/68/91/92/96/97.

Type of Review: Approved through October of 2002.

Affected Public: Individuals or Households, business or other for-profit institutions, not-for-profit institutions and Federal Government.

Estimated Number of Respondents: 2,231,365.

Estimated Time Per Response: 0.46 hours.

Estimated Total Annual Burden Hours: 1,018,736 hours.

Needs and Uses: During the processing for an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (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 to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, N.W., Washington, D.C. 20503 (Attn: Desk Officer for the United States Patent and Trademark Office).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the

requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.251 is added immediately following § 1.248 to read as follows:

§ 1.251 Unlocatable file.

(a) In the event that the Office cannot locate the file of an application, patent, or other patent-related proceeding after a reasonable search, the Office will notify the applicant or patentee and set a time period within which the applicant or patentee must comply with one of paragraphs (b)(1), (b)(2), or (b)(3) of this section.

(b) If an applicant or patentee has been given notice under paragraph (a) of this section that the Office cannot locate the file of a patent, application, or other patent-related proceeding after a reasonable search, applicant or patentee must do one of the following within the time period set in the notice:

(1) Provide a copy of the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, a list of such correspondence, and a statement that the copy is a complete and accurate copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding;

(2) Produce the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy, and provide a statement that the copy is a complete and accurate copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding; or

(3) If applicant or patentee does not possess a complete copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, provide a copy of the applicant's or patentee's record (if any) of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, a list of such correspondence, and a statement that applicant or patentee does not possess a complete copy of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding and that the copy provided is a complete and accurate copy of applicant's or patentee's record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding.

(c) With regard to a pending application, failure to timely comply with one of paragraphs (b)(1), (b)(2), or (b)(3) of this section will result in abandonment of the application.

Dated: June 30, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–17182 Filed 7–7–00; 8:45 am]

BILLING CODE 3510–16–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–042–01–6990b; A–1–FRL–6727–8]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire, Rhode Island, and Vermont; Aerospace Negative Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve negative declarations submitted by the States of New Hampshire, Rhode Island, and Vermont for aerospace coating operations. In the Final Rules section of this **Federal Register**, EPA is approving the State's 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 rule, 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. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before August 9, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the States submittals are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England, One Congress Street, 11th floor, Boston, MA 02114–2023. Copies of New Hampshire's submittal are also available at Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095. Copies of Rhode Island's submittal are also available at Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767. Copies of Vermont's submittal are also available Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: June 12, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

[FR Doc. 00–16627 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 103–1b; FRL–6731–9]

Approval and Promulgation of Implementation Plans; Ohio, Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a maintenance plan and redesignation of Cuyahoga and Jefferson Counties, Ohio, to attainment for particulate matter, specifically for particles known as PM_{10}.

Ohio requested this action on May 22, 2000. In proposing this action, EPA proposes to conclude that these areas are meeting the standard and have plans for assuring continued attainment. Although for administrative convenience EPA is only proposing action on the Ohio portion of the Steubenville area, this action reflects a review of air quality for the entire area and Ohio's fulfillment of its portion of an area-wide attainment plan that it developed jointly with West Virginia. EPA anticipates receiving and rulemaking in the near future on a similar request from West Virginia for redesignation of its portion of the Steubenville area.

This action reflects parallel processing of Ohio's request. Ohio has proposed to request redesignation of the above two counties. Ohio held a hearing on its proposed request on June 12, 2000, and anticipates making a final request for redesignation shortly thereafter. Since Ohio's final redesignation request will likely be similar to its proposed request, EPA is proposing approval action on Ohio's request. If the final request differs significantly from the proposed request, EPA will repropose action on the request. Otherwise, EPA anticipates proceeding directly to final action.

DATES: Written comments on this proposed rule must arrive on or before August 9, 2000.

ADDRESSES: Send comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal are available for inspection at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. Review of Redesignation Request
1. What criteria is EPA using?
2. Are the areas attaining the standards?
3. Has EPA fully approved the plans?
4. Is attainment due to permanent emission reductions?
5. Does the maintenance plan assure continued attainment?
6. Has the State met Section 110 and Part D?
II. Proposed Rulemaking Action
III. Administrative Requirements
A. Executive Order 12866
B. Executive Order 13045
C. Executive Order 13084
D. Executive Order 13132
E. Regulatory Flexibility
F. Unfunded Mandates

I. Review of Redesignation Request

1. What Criteria Is EPA Using?

Ohio's letter of May 22, 2000, requests rulemaking on redesignation of Cuyahoga and Jefferson Counties from nonattainment to attainment for PM_{10}. The central criteria for redesignations from nonattainment to attainment are in section 107(d)(3)(E) of the Clean Air Act. EPA may not promulgate such a redesignation unless: (A) the area has attained the applicable NAAQS, (B) the area has a fully approved SIP under section 110(k) of the Act, (C) EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions, (D) EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Act, and (E) the state has met all requirements applicable to the area under section 110 and part D of the Act.

EPA has issued a variety of relevant guidance. The most relevant guidance on redesignations is given in a September 4, 1992, memorandum issued by the Director of EPA's Office of Air Quality Planning and Standards. Guidance relevant to the evaluation of monitoring data is given in Appendix K of Title 40 Code of Federal Regulations Part 50 (40 CFR 50). Guidance relevant to maintenance plan review is included in the September 4, 1992, memorandum.

2. Are the Areas Attaining the Standards?

At issue in this rulemaking are designations promulgated on November 6, 1991, based on the PM_{10} standards as given in 40 CFR 50.6. EPA also set newer standards for PM_{10} as well as new standards for $PM_{2.5}$, promulgated on July 18, 1997, and codified at 40 CFR 50.7. EPA expected to promulgate designations for the newer PM_{10} standards and rescind the designations for the older PM_{10} standards, but the Circuit Court of Appeals for the District of Columbia has vacated the newer PM_{10} standards. While this court decision is under appeal, Ohio has requested that the still extant designations for Cuyahoga and Jefferson Counties for the older PM_{10} standards be changed from nonattainment to attainment.

The September 4, 1992 guidance recommends evaluating three years of representative monitoring data. Ohio monitors PM_{10} concentrations at numerous locations in Cuyahoga and Jefferson Counties, including locations expected to observe the highest concentrations in these counties. Detailed results of this monitoring are available in EPA's Air Information Retrieval System (AIRS) and on the internet at http://www.epa.gov/airsdata/monsum.htm. Ohio's submittal summarizes this air quality data and analyzes the expected likelihood of exceeding the air quality standards.

For Cuyahoga County, Ohio's submittal includes information from eight monitoring sites, six of which are located in the central part of Cleveland where emissions are highest and the highest concentrations are expected. Ohio provided data for the most recent three years, *i.e.,* 1997 to 1999. All sites recorded annual average concentrations below the annual average standard in all three years. Six of these eight sites also recorded no exceedances of the 24-hour standard. Two sites in central Cleveland recorded exceedances and must be analyzed with respect to expected exceedances.

The monitoring site in Cuyahoga that has been most likely to exceed air quality standards is site number 39–035–0013, at 2785 Broadway. During 1997 to 1999, this site recorded concentrations above the 24-hour average standard of 150 $\mu g/m^3$ on two days—once in 1998 and once in 1999. Therefore, Ohio analyzed expected exceedances for this site in accordance with Appendix K of 40 CFR 50. Appendix K provides procedures for estimating a probability number of exceedances expected for days without valid monitoring data. These procedures generally assume that the probability of an exceedance on days without valid monitoring data equals the probability of an exceedance among days with valid data for the same calendar quarter. For the 2785 Broadway site, for 1998, the monitor recorded 1 exceedance among the 86 days during the second quarter with valid data. Therefore, the 5 days during that quarter without valid data were estimated to have an additional ($5 \times 1/86$) or .06 expected exceedances, for a total of 1.06 expected exceedances. For 1999, this monitor recorded 1 exceedance during the 85 days of the first quarter with valid data, so the remaining 5 days were estimated to have ($5 \times 1/85$) or .06 expected exceedances, for a total of 1.06 expected exceedances. The three year average at

this site is therefore 0.7 expected exceedances. Since the 24-hour standard is met when the average number of expected exceedances of 150 μg/m³ is 1.0 or less, this indicates attainment of this standard.

The other monitoring site with a measured exceedance is site number 39–035–0060, at East 14th Street and Orange Avenue. This site has two operating instruments: a high volume sampler which collects samples once every six days, and a continuous instrument which operates every day. This site is 1 kilometer from the 2785 Broadway site.

One exceedance of 150 μg/m³ was recorded at the 14th and Orange site in 1997 to 1999, recorded by the high volume sampler in the first quarter of 1999. Appendix K and related guidance authorizes an exemption from the missing data adjustment if daily sampling is initiated at the site or daily sampling occurs at another site in the area that is a worst concentration site. The 2785 Broadway site makes daily readings and is a nearby worst concentration site, having concentrations similar to those at the 14th and Orange site but being somewhat more prone to observe exceedances. Indeed, on the day that the 14th and Orange site observed an exceedance, the 2785 Broadway site observed an exceedance as well. Therefore, a missing data adjustment need not be done for the 1999 exceedance at this site. Instead, EPA evaluates the 14th and Orange site as having 1.0 expected exceedance in 1999, zero expected exceedances for 1997 and 1998, and thus a three year average of 0.3 expected exceedances.

Further justification for exempting the 14th and Orange site from evaluation of expected exceedances for days lacking high volume sampler data is the availability of daily concentration measurements by another instrument at the same site. Data from this other instrument support EPA's belief that the likelihood of measured exceedances at this location is low and that the percentage of high volume samples found to exceed the standard (one day among 14 samples for the first quarter of 1999) overstates the actual likelihood of exceedances at this location.

The two instruments at this site use different methods, but both methods give valid indication of whether an exceedance of the standard has occurred. Conceptually, one could evaluate the data from the two instruments on a day-by-day basis to assess the number of days that are above or below the standard at this location and the number of days for which the air quality there is unknown. Of the 90 days in the first quarter of 1999, 74 days had only continuous sampler data, 13 days had both high volume sampler data and continuous sampler data, 1 day had only high volume sampler data, and 2 days had no data. For the 74 days with only continuous sampler data, all days were below the level of the standard; in fact, all days had concentrations below 80 μg/m³. Similarly, for the 13 days with both continuous sampler and high volume sampler data, both instruments showed concentrations that in all cases were below 60 μg/m³. The one day with only high volume sampler data showed a concentration above the standard (at 233 μg/m³). That is, the 88 days with data from either or both instruments included one day that exceeded the standard and 87 days in which one or both instruments indicated were below the standard. This suggests that the location had one day with a known exceedance and 2 days without data which could be estimated to have a 1 in 88 likelihood of exceeding the standard. When considered in combination with the two years with no measured exceedances, this further supports the view that the standard was attained at this location.

For the Steubenville area, the assessment must address air quality in the West Virginia as well as the Ohio portion of the area. Although this rulemaking only addresses the Ohio portion of the area, the first requirement is that the entire area meet the air quality standard. Therefore, the analysis of Steubenville area air quality addressed the one monitor in Follansbee, West Virginia, as well as the five monitoring locations in Jefferson County, Ohio. Monitors at all six locations have recorded no 24-hour average values above 150 μg/m³ and no annual average values above 50 μg/m³ since 1990. Although the record has a significant data gap in the third and fourth quarters of 1997, complete data for 1994 to 1996 as well as for 1998 and 1999 show attainment. The data that are available for 1997 also show no exceedances, so these data are consistent with the conclusion based on the other years' data that this area has been attaining the standard.

Beginning in 1998, Ohio has taken less frequent samples at some sites. EPA concurred with this change, concluding on the basis of prior data that the reduced sampling frequency would provide sufficient data to evaluate the area's attainment status. EPA believes the data are adequate to conclude that all portions of the Steubenville area are attaining both the 24-hour and the annual average standards.

In summary, Cuyahoga County has recorded no recent exceedances of the annual standard, no exceedances of the 24-hour standard at six of eight sites, and below the acceptable 1.0 expected exceedances of the 24-hour standard at the other two sites. The Steubenville area has recorded no recent exceedances of either PM_{10} air quality standard. Therefore, both areas are attaining both of the applicable PM_{10} air quality standards.

3. Has EPA Fully Approved the Plans?

EPA approved most of Ohio's particulate matter regulations on May 27, 1994, at 59 FR 27464. This rulemaking approved numerous statewide regulations as well as rules for Cuyahoga and Jefferson Counties. Nevertheless, EPA concluded that Ohio had not satisfied selected requirements. Ohio provided a supplemental submittal to EPA on November 3, 1995. On June 12, 1996, at 61 FR 29662, EPA concluded that Ohio had satisfied all requirements for both Cuyahoga and Jefferson Counties. Although EPA is not rulemaking on redesignation of the West Virginia portion of the Steubenville area, EPA approved the companion plan for West Virginia's portion of the area on November 15, 1996, at 61 FR 58481. Ohio's and West Virginia's plans were developed jointly and include the same attainment strategy. Thus, with respect to redesignation of the Ohio portion of the Steubenville area, EPA has approved Ohio's portion of a collectively accepted and approved plan for assuring attainment in this area.

4. Is Attainment Due to Permanent Emission Reductions?

Ohio's plan requires permanent emission reductions at a wide range of facilities. The emission reductions include installation of air pollution control equipment to capture and control particulate matter that was previously emitted. The reductions also include required efforts to reduce emissions from plant roadways and storage piles. These reductions have led to these counties now attaining the standards.

5. Does the Maintenance Plan Assure Continued Attainment?

Ohio's maintenance plans for Cuyahoga County and the Steubenville area consist mainly of the emission limits in the attainment plan noted above that EPA approved in 1996. That plan included an inventory of maximum allowable emissions from the most significant sources of particulate matter emissions in these areas, and demonstrated that the areas would

achieve and maintain attainment even if the sources operated at maximum capacity. The only remaining issue is whether background impacts from sources that lack such limits, such as diesel vehicles and home heating, will increase sufficiently to cause violations of the air quality standard.

Ohio provided census information indicating a declining population in Cuyahoga and Jefferson Counties. This indicates that the minor source types not regulated in Ohio's rules will likely have declining emissions. Ohio also notes the expected decline in diesel emissions as cleaner new vehicles required by EPA regulations come to replace dirtier older vehicles. These declines can be expected to continue throughout the 10 years that must be included in maintenance plans. Ohio also noted that coke oven emissions have declined and will remain below SIP levels due to EPA regulations requiring maximum achievable control technology. Therefore, EPA concludes that Ohio's maintenance plan provides adequate assurance that the particulate matter standards will continue to be attained in Cuyahoga County and the Steubenville area.

Maintenance plans must include contingency measures in case the areas have problems staying below the air quality standards. Ohio has contingency measures in conjunction with its attainment plan that EPA approved on May 6, 1996, at 61 FR 20142. These measures have air quality triggers that are independent of attainment status, so they are also valid contingency measures for maintenance purposes.

Maintenance plans further must include commitments to continued air quality monitoring and to submittal of a reassessment of maintenance in 8 years. Ohio's monitoring plan is part of its SIP and must continue to be implemented to continue to satisfy section 110 of the Clean Air Act. Ohio's maintenance plan is in most respects a permanent maintenance plan, but EPA expects Ohio to reassess its maintenance plan in 8 years if the relevant standard is still in effect at that time.

6. Has the State Met Section 110 and Part D?

The rulemaking on Ohio's particulate matter plan cited above, published on June 12, 1996, at 61 FR 29662, concludes that Ohio has met the requirements of Section 110 and Part D with respect to particulate matter planning in Cuyahoga and Jefferson Counties.

II. Proposed Rulemaking Action

Cuyahoga and Jefferson Counties in Ohio are currently designated nonattainment for the PM_{10} standards given at 40 CFR 50.6. EPA proposes to approve Ohio's maintenance plan for these areas.

Clean Air Act section 107(d)(3)(E) identifies five prerequisites for redesignation of areas from nonattainment to attainment. EPA proposes to conclude that these criteria are met with respect to PM_{10} in Cuyahoga and Jefferson Counties. Therefore, EPA proposes to redesignate these two counties to attainment for PM_{10}.

For the Steubenville area, EPA is today proposing action only on the Ohio portion of this area. This approach is for administrative convenience and in no way signifies any splitting of the area into separate air quality planning areas. EPA's action today reflects a review of the air quality for the full Steubenville area as well as Ohio's fulfillment of its portion of an attainment plan that Ohio and West Virginia jointly developed. This administrative approach is the same as the administrative approach used in rulemaking on the attainment plan, in which separate Ohio versus West Virginia rulemaking was based on fulfillment by each State of its share of a jointly developed area-wide plan. EPA has not yet received a redesignation request for the West Virginia portion of the Steubenville area. EPA anticipates receiving and rulemaking on such a request in the near future. In the future, if the standard is violated in either portion of the area, such that redesignation back to nonattainment is warranted, EPA will reinstate nonattainment status for the entire area.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, 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 proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

The action being proposed 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, because it merely proposes to approve a change that the State requested in the attainment status of two areas, 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.

E. Regulatory Flexibility

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.

The action being proposed will not have a significant impact on a substantial number of small entities because redesignations under section 107 of the Clean Air Act do not create any new requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under sections 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 costs to State, local, or tribal governments in the aggregate; or to the 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 proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve a change in the attainment status of two areas, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: June 28, 2000.

Norman Niedergang,

Regional Administrator, Region 5.

[FR Doc. 00–17192 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To Revise Critical Habitat for the Cape Sable Seaside Sparrow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to revise critical habitat for the Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis*), under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that the petition presents substantial information indicating that revising critical habitat for this species may be warranted.

DATES: The finding announced in this notice was made on June 21, 2000. Send your comments and materials to reach us on or before September 8, 2000. We may not consider comments received after the above date in making our decision for the 12-month finding.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand-deliver comments to the Field Supervisor, U.S. Fish and Wildlife Service, 1360 U.S. Hwy 1, Suite 5, Vero Beach, Florida 32961. You may also comment via the Internet to heather_mcsharry@fws.gov. See Supplementary Information for comment procedures.

FOR FURTHER INFORMATION CONTACT: Mr. Jay Slack at 561/562–3909, extension 234.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(D)(i) of the Act and our listing regulations (50 CFR 424.14 (c)(1)) require that we make a finding on whether a petition to revise critical habitat of a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. We are to base this finding on all information available to us at the time the finding is made. To the maximum extent practicable, we are to make this finding within 90 days of the date we received the petition, and we are to publish the finding promptly in the **Federal Register**. Our regulations (50 CFR 424.14 (c)(2)(i)) further require that, in making a finding on a petition to revise critical habitat, we consider whether the petition contains information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species involved.

On October 22, 1999, we published Listing Priority Guidance for Fiscal Year 2000 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings, giving highest priority to processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is the processing of final determinations on proposed additions

to the lists of endangered and threatened wildlife and plants. Third priority (Priority 3) is the processing of new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. This 90-day petition finding is a Priority 4 action and is being completed in accordance with the current Listing Priority Guidance.

On August 26, 1999, the Biodiversity Legal Foundation submitted a petition to us to revise the critical habitat designation for the Cape Sable seaside sparrow. We received the petition on August 31, 1999. On September 29, 1999, we sent a letter to Mr. Sidney B. Maddock, Biodiversity Legal Foundation, acknowledging receipt of the petition.

The petition requested that critical habitat be revised for the Cape Sable seaside sparrow. The petitioner stated that the current designated critical habitat for the Cape Sable seaside sparrow is now inadequate and that part of the critical habitat has been destroyed by conversion to agricultural use. The petitioner asserted that substantial scientific evidence supports designation of marl prairie areas (short-to moderate-hydroperiod areas supporting sparse, clumped vegetation and producing marl soils) historically occupied by the western subpopulation of the sparrow as critical habitat and removal of privately owned agricultural areas from the critical habitat designation. This scientific information, gathered since the listing of the species, indicates that currently designated critical habitat encompassing the marl prairie areas historically occupied by the eastern subpopulations of the sparrow should also include the marl prairie areas historically occupied by the western subpopulation of the sparrow. As part of conservation of the sparrow, protection and management of the western subpopulation habitat area is essential to ensuring the continued existence of the species. The petitioner further asserted that the current designation of critical habitat does not include a detailed discussion of the constituent elements and special management considerations necessary for conservation of the species, as required by the Endangered Species Act, and that sufficient scientific evidence is now available to describe these constituent elements and any special management considerations and protection measures. The petitioner did not provide specific locations for areas to be included in or removed from the critical habitat, but referred to marl prairie areas historically occupied by the western subpopulation of the Cape Sable seaside sparrow and privately owned habitat areas that had been converted to agricultural use.

Since the listing of the Cape Sable seaside sparrow, we have been funding scientific studies and otherwise seeking and soliciting information regarding its status, life-history, and ecology. We also have participated in and funded conservation efforts including habitat protection and management. These efforts have expanded and refined our knowledge about critical habitat for the Cape Sable seaside sparrow. We have conducted numerous section 7 consultations concerning the effects of land and water management plans on the Cape Sable seaside sparrow. Research and monitoring required for these consultations has also contributed to our database regarding critical habitat.

In 1998 we issued a draft revised recovery plan for the sparrow as part of the draft Multi-Species Recovery Plan (MSRP) for South Florida. This document provides a detailed justification for the need to review and redesignate critical habitat. We state in the document that critical habitat, as designated, does not adequately account for the distribution of the present-day core subpopulations, or the areas necessary for the birds to maintain a stable population. An important area west of Shark River Slough, which until 1993 supported one of two critical subpopulations (nearly half of the entire population), is not included within the designation and has been undergoing detrimental changes in habitat structure as a result of water management practices. Additionally, other parts of the designated critical habitat have been converted to agriculture and are no longer occupied by sparrows. Thus, the extent of the critical habitat requires significant review and redesignation. We also state that when we redesignate critical habitat, the constituent elements must be defined. We included a specific task in the draft MSRP that called for a review and revision of the current critical habitat designation based on distribution surveys.

We have reviewed the petition, the information provided in the petition, other literature, and information available in our files. The petition includes much of the information already present in our files. Available information and data indicate that marl prairies along the western flank of Shark River Slough may be essential to the survival and recovery of the Cape Sable seaside sparrow. Therefore, based on the best scientific and commercial information available, we find the petition presents substantial information that revision of critical habitat for the Cape Sable seaside sparrow may be warranted.

We solicit information, including additional comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties, concerning revision of the critical habitat for the Cape Sable seaside sparrow.

After consideration of additional information, submitted during the indicated time period (see **DATES** section), we will prepare a 12-month finding, as required by section 4(b)(3)(D)(ii) of the Act and 50 CFR 424.14(c)(3).

Comment Procedures

Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include ''Attention: [Cape Sable Seaside Sparrow]'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the address given in the **ADDRESSES** section or by telephone at 561/562–3909. Finally, you may hand-deliver or mail comments to the address given in the **ADDRESSES** section. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Author

The primary author of this document is Heather McSharry, South Florida Field Office (see **ADDRESSES** section).

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

Dated: June 21, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–17260 Filed 7–7–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 25 and 32

RIN 1018–AG01

2000–2001 Refuge-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We propose to add national wildlife refuges (refuges) to the list of areas open for hunting and/or sport fishing, along with pertinent refuge-specific regulations for such activities; and amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2000–2001 season.

DATES: You should submit comments on or before August 9, 2000.

ADDRESSES: Submit written comments to Chief, Branch of Planning and Policy, Division of Refuges, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240. See **SUPPLEMENTARY INFORMATION** for information on electronic submission.

FOR FURTHER INFORMATION CONTACT: Leslie A. Marler, (703) 358–2397; Fax (703) 358–2248.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 (NWRSAA) closes national wildlife refuges to all uses until we open them. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or fishing upon a determination that such uses are compatible with the purposes of the refuge. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound fish and wildlife management and administration, and otherwise must be in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System (System) for the benefit of present and future generations of Americans.

We review refuge hunting and fishing programs annually to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications, deletions, or additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications to ensure the continued compatibility of hunting and fishing programs and that these programs will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.

You may find provisions governing hunting and fishing on national wildlife refuges in 50 CFR part 32. We regulate hunting and fishing on refuges to:

- Ensure compatibility with the purpose(s) of the refuge;
- Properly manage the fish and wildlife resource;
- Protect other refuge values; and
- Ensure refuge user safety.

On many refuges where we decide it is proper to open them for hunting and fishing, our general policy of adopting regulations identical to State hunting and fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined under the section entitled ''Statutory Authority.'' We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to either migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or those species subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and fishing in 50 CFR part 32. In this rulemaking, we are promulgating many of the amendments to these sections to standardize and clarify the existing language of these regulations.

Some refuges make seasonal information available in brochures or leaflets to supplement these refuge-specific regulations, which we provide for in 50 CFR 25.31.

Plain Language Mandate

In this rule the vast majority of the revisions to the individual refuge units are to comply with a Presidential mandate to use plain language in regulations and do not modify the substance of the previous regulations. These types of changes include using ''you'' to refer to the reader and ''we'' to refer to the Service and using the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity.

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k–460k–4) govern the administration and public use of national wildlife refuges.

The National Wildlife Refuge System Improvement Act (NWRSIA) of 1997 is the latest amendment to the NWRSAA. It amends and builds upon the NWRSAA in a manner that provides an improved ''Organic Act'' for the System similar to those that exist for other public lands. It serves to ensure that we effectively manage the System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The NWRSAA states first and foremost that we focus the mission of the System on conservation of fish, wildlife, and plant resources and their habitat. This Act requires the Secretary, before initiating or allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible and promotes public safety. The NWRSIA establishes as the policy of the United States that wildlife-dependent recreation, when it is compatible, is a legitimate and appropriate public use of the System, through which the American public can develop an appreciation for fish and wildlife. The NWRSIA establishes six compatible wildlife-dependent recreational uses as the priority general public uses of the System. Those priority uses are: hunting, fishing, wildlife observation, wildlife photography, environmental education, and environmental interpretation.

The RRA authorizes the Secretary to administer areas within the System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. This act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not

inconsistent with other previously authorized operations.

The NWRSAA and RRA also authorize the Secretary to issue regulations to carry out the purposes of the acts and regulate uses.

We develop hunting and sport fishing plans for each refuge prior to opening it to hunting or fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purposes for which we established the refuge. We have ensured initial compliance with the NWRSAA and the RRA for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at the time of acquisition. This policy ensures that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. We ensure continued compliance by the development of Comprehensive Conservation Plans, long-term hunting and sport fishing plans, and by annual review of hunting and sport fishing programs and regulations.

In preparation for new openings, we include the following documents in the refuges' ''opening package'': an interim hunting and fishing management plan; a Section 7 determination pursuant to the Endangered Species Act that these openings will have no effect, or are not likely to have an adverse effect, on listed species or critical habitats; a letter of concurrence from the affected State(s); interim compatibility determinations; and refuge-specific regulations to administer the hunting and/or fishing programs. Upon review of these documents, we have determined that the opening of these national wildlife refuges to hunting and fishing is compatible with the principles of sound fish and wildlife management and administration and otherwise will be in the public interest.

We propose to allow the following wildlife-dependent recreational activities for the first time:

Hunting of migratory game birds on:

- Grand Bay National Wildlife Refuge, Alabama
- Mandalay National Wildlife Refuge, Louisiana
- Lake Umbagog National Wildlife Refuge, Maine and New Hampshire
- McNary National Wildlife Refuge, Oregon
- Balcones Canyonland National Wildlife Refuge, Texas
- Lower Rio Grande Valley National Wildlife Refuge, Texas
- Arid Lands National Wildlife Refuge Complex, Washington

Upland game hunting on:

- Grand Bay National Wildlife Refuge, Alabama
- Cameron Prairie National Wildlife Refuge, Louisiana
- Lake Umbagog National Wildlife Refuge, Maine and New Hampshire
- McNary National Wildlife Refuge, Oregon
- Arid Lands National Wildlife Refuge Complex, Washington

Big game hunting on:

- Grand Bay National Wildlife Refuge, Alabama
- Mandalay National Wildlife Refuge, Louisiana
- Lake Umbagog National Wildlife Refuge, Maine and New Hampshire
- San Andres National Wildlife Refuge, New Mexico
- McNary National Wildlife Refuge, Oregon and Washington
- Lower Rio Grande Valley National Wildlife Refuge, Texas
- Mackay Island National Wildlife Refuge, Virginia
- Arid Lands National Wildlife Refuge Complex, Washington

Sport fishing on:

- Atchafalaya National Wildlife Refuge, Louisiana
- Bayou Cocodrie National Wildlife Refuge, Louisiana
- Rachel Carson National Wildlife Refuge, Maine
- Sand Lake National Wildlife Refuge, South Dakota
- Trinity River National Wildlife Refuge, Texas
- Mackay Island National Wildlife Refuge, Virginia
- Arid Lands National Wildlife Refuge Complex, Washington

In accordance with NWRSAA and the RRA, we have determined that these openings are compatible and consistent with the primary purposes for which we established the respective refuges.

We propose to remove Ankeny National Wildlife Refuge, Oregon, which had been open for migratory game bird hunting, from the list of refuges open for wildlife-dependent recreational activities.

We are correcting an administrative error that occurred when we inadvertently dropped ''Sport Fishing'' as an activity open to the public in Sand Lake National Wildlife Refuge in the State of South Dakota from 50 CFR 32.61. Sand Lake National Wildlife Refuge has been open to ''Sport Fishing'' since December 22, 1978.

We are making a technical correction to update 50 CFR 25.23 to reflect current information collection clearance numbers that the Office of Management and Budget (OMB) approved for: ''Special Use Permit Application on National Wildlife Refuges Outside Alaska'' (1018–0102 which expires December 31, 2001), and ''Special Use Permit Applications on National Wildlife Refuges In Alaska'' (1018–0014, which expires August 31, 2000, and is currently at OMB for renewal).

Request for Comments

You may comment on this proposed rule by any one of several methods:

1. You may mail comments to: Chief, Branch of Planning and Policy, Division of Refuges, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240.

2. You may comment via the Internet to: Refuge_Specific_Comments@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: ''Attn: 1018–AG01'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–1744.

3. You may fax comments to: Chief, Branch of Planning and Policy, Division of Refuges, (703) 358–2248.

4. Finally, you may hand-deliver comments to the address mentioned above.

We seek comments on this proposed rule and will accept comments by any of the methods described above. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request 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.

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. We considered providing a 60-day rather than a 30-day comment period. However, we determined that an additional 30-day delay in processing these refuge-specific hunting and

fishing regulations would hinder the effective planning and administration of our hunting and fishing programs. That delay would jeopardize establishment of hunting and fishing programs this year, or shorten their duration. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, in order to continue to provide for previously authorized hunting opportunities while at the same time provide for adequate resource protection, we must be timely in providing modifications to certain hunting programs on some refuges.

When finalized, we will incorporate this regulation into Title 50 Code of Federal Regulations (50 CFR) parts 25 and 32. Part 25 contains the administrative provisions for the National Wildlife Refuge System. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on national wildlife refuges.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Regulatory Planning and Review

This document is not a significant rule subject to Office of Management and Budget review under Executive Order 12866. See explanation under Regulatory Flexibility Act.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This rule is administrative, legal, technical, and procedural in nature and makes minor modification to existing refuge public use programs. The rule will allow hunting on 10 refuges where we had prohibited hunting and allow fishing on 7 refuges where we had prohibited that activity. We estimate that these changes will result in 9,440 additional visitor-hunting-days and 49,200 visitor-fishing-days. The appropriate measure for the net benefits of these changes is the additional net economic value experienced by the participants. The 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation measured net economic values by activity and region. Applying these estimates to the number of additional activity-days permitted by this rule yields an estimate of the national benefits from increased hunting of $368,000 and from increased fishing of $1.6 million (both in 1999 dollars). These estimates are below the threshold for a significant rule.

b. This rule will not create inconsistencies with other agencies' actions. Before proposing regulations, we coordinate recreational use on national wildlife refuges with State governments as well as other Federal agencies having adjoining or overlapping jurisdiction. The regulation is consistent with, and not less restrictive than, other agencies' rules.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The provisions of this rule only apply to persons involved in wildlife-dependent public use, including regulated hunting and sport fishing, on national wildlife refuges, which is a privilege and not a right. User fees will not change as a result of this rule.

d. This rule will not raise novel legal or policy issues. This rule continues the practice of requiring public use of refuges to be compatible with the primary purpose of the refuge.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities such as businesses, organizations, and governmental jurisdictions in the area as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final Regulatory Flexibility Analysis is not attached, and a Small Entity Compliance Guide is not required.

This rulemaking will not have a significant economic impact on a substantial number of small entities (refer to paragraph a. above for the net economic values). Congress created the National Wildlife Refuge System to conserve fish, wildlife, and plants and their habitats. They facilitated this conservation mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation, including hunting, fishing, wildlife observation, wildlife photography, environmental education, and environmental interpretation as priority public uses on national wildlife refuges and to better appreciate the value of, and need for, fish and wildlife conservation.

This rule is administrative, legal, technical, and procedural in nature and provides for minor changes to the methods of hunting and fishing permitted but does not stop the overall use allowed. This rule will not significantly change the number of visitors using refuges or their spending and, therefore, will have no significant impact on the local economies in their vicinity.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the Regulatory Planning and Review section above. This rule:

a. Does not have an annual effect on the economy of $100 million or more [This regulation will affect only visitors at national wildlife refuges. It will cause a slight change in the number of visitors using the refuge (9,440 additional visitor-hunting days and 49,200 visitor-fishing days).];

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

Since this rule applies to public use of federally owned and managed refuges, it does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This regulation will affect only visitors at national wildlife refuges and limit what they can do while they are on a refuge.

Federalism (Executive Order 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. In preparing this proposed rule, we worked with State governments.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation will clarify established regulations and result in better understanding of the regulations by refuge visitors.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act. See 50 CFR 25.23 for information concerning that approval.

Section 7 Consultation

In preparation for new openings, we include Section 7 consultation documents approved by the Services' Ecological Services program in the refuge's ''openings package'' for Regional review and approval from the Washington Office. We reviewed the changes in hunting and fishing regulations herein with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543). For the national wildlife refuges proposed to open for hunting and/or fishing the Service has determined that Bayou Cocodrie, Lake Umbagog, Grand Bay, Lower Rio Grande, and McNary will not likely adversely affect and Rachel Carson, Atchafalaya, San Andres, and Mandalay will not affect the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species within the System.

Arid Lands is opening with no Section 7 under an existing record of decision with the Department of Energy, who has primary jurisdiction.

We comply with Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) when developing Comprehensive Conservation Plans, management plans for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We also make determinations required by the Endangered Species Act on a case-by-case basis before the addition of a refuge to the lists of areas open to hunting or fishing as contained in 50 CFR 32.7.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and 516 DM 6, Appendix 1. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required.

A categorical exclusion from NEPA documentation covers this amendment of refuge-specific hunting and fishing regulations since it is technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (516 DM 2, Appendix 1.10).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge Comprehensive Conservation Plans and/or step-down management plans, pursuant to our refuge planning guidance in 602 FW 1–3. We prepare these plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans.

Available Information for Specific Refuges

Individual refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs and maps of their respective areas. You may also obtain information from the Regional offices at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, New Mexico 87103; Telephone (505) 248–7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713–5401.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345; Telephone (404) 679–7166.

Region 5—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8306.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236–8145.

Region 7—Alaska. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Primary Author

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List of Subjects

50 CFR Part 25

Administrative practice and procedure, Concessions, Reporting and recordkeeping requirements, Safety, Wildlife refuges.

50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend Title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 25—[AMENDED]

1. The authority citation for part 25 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i, 3901 *et seq.*; and Pub. L. 102–402, 106 Stat. 1961.

2. By revising § 25.23 to read as follows:

§ 25.23 What are the general regulations and information collection requirements?

The Office of Management and Budget has approved the information collection requirements contained in subchapter C, parts 25, 32, and 36 under 44 U.S.C. 3501 *et seq.* and assigned the following clearance numbers: Special Use Permit Applications on National Wildlife Refuges in Alaska (SUP–AK), clearance number 1018–0014; Special Use Permit Applications on National Wildlife Refuges Outside Alaska (SUP), clearance number 1018–0102. See § 36.3 of this subchapter for further information on Special Use Permit Applications on National Wildlife Refuges in Alaska. We are collecting the information to assist us in administering these programs in accordance with statutory authorities that require that recreational uses be compatible with the primary purposes for which the areas were established. We require the information requested in the application form for the applicant to obtain a benefit. We estimate the public reporting burden for the SUP application form to be 30 minutes per response. This includes time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ, Washington, DC 20240 (1018–0014 or 1018–0102).

PART 32—[AMENDED]

3. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

§ 32.7 [Amended]

4. In § 32.7 by:

a. Alphabetically adding ''Grand Bay National Wildlife Refuge'' in the State of Alabama;

b. Revising the listing of ''Walnut Creek National Wildlife Refuge'' under the State of Iowa to read ''Neal Smith National Wildlife Refuge;''

c. Alphabetically adding ''Lake Umbagog National Wildlife Refuge'' in the State of Maine;

d. Alphabetically adding ''Lake Umbagog National Wildlife Refuge'' in the State of New Hampshire;

e. Alphabetically adding ''San Andres National Wildlife Refuge'' in the State of New Mexico;

f. Removing ''Ankeny National Wildlife Refuge'' in the State of Oregon;

g. Revising the listing of ''Klamath Forest National Wildlife Refuge'' to read ''Klamath Marsh National Wildlife Refuge'' in the State of Oregon.

h. Alphabetically adding ''McNary National Wildlife Refuge'' in the State of Oregon;

i. Alphabetically adding ''Lower Rio Grande Valley National Wildlife Refuge'' in the State of Texas;

j. Alphabetically adding ''Trinity River National Wildlife Refuge'' in the State of Texas;

k. Alphabetically adding ''Mackay Island National Wildlife Refuge'' in the State of Virginia; and

l. Alphabetically adding ''Arid Lands National Wildlife Refuge Complex'' in the State of Washington.

5. In § 32.20 Alabama by alphabetically adding Grand Bay National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

Grand Bay National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following condition: We require a refuge permit.

B. Upland Game Hunting. We allow hunting of squirrel and rabbits on designated areas of the refuge subject to the following condition: We require a refuge permit.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require a refuge permit.

D. Sport Fishing. [Reserved]

* * * * *

6. In § 32.23 Arkansas by revising paragraphs B. and D.1. of Wapanocca National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Wapanocca National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, beaver, nutria, raccoon, and opossum on designated areas of the refuge subject to the following condition: We require permits.

* * * * *

D. Sport Fishing. * * *

1. We allow fishing from March 15 through October 31 from sunrise to sunset.

* * * * *

7. In § 32.24 California by:

a. Adding paragraphs A.5., A.6., B.6., and B.7. of Colusa National Wildlife Refuge;

b. Adding paragraphs A.8., A.9, B.6, and B.7. of Delevan National Wildlife Refuge;

c. Revising paragraph A.2., and adding paragraphs A.2.a., A.2.b. of Lower Klamath National Wildlife Refuge;

d. Adding paragraphs A.8., A.9., B.6., and B.7. of Sacramento National Wildlife Refuge;

e. Adding paragraphs A.5., A.6., B.5., and B.6. of Sutter National Wildlife Refuge; and

f. Revising paragraph A.2., adding paragraphs A.2.a. and A.2.b. of Tule Lake National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Colusa National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

5. You may enter or exit only at designated locations.

6. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

B. Upland Game Hunting. * * *

* * * * *

6. You may enter or exit only at designated locations.

7. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

* * * * *

Delevan National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

8. You may enter or exit only at designated locations.

9. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment, or stopping between designated parking areas.

B. Upland Game Hunting. * * *

* * * * *

6. You may enter or exit only at designated locations.

7. Vehicles may stop only at designated parking areas. We prohibit

the dropping of passengers or equipment, or stopping between designated parking areas.

* * * * *

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Shooting hours end at 1:00 p.m. on all California portions of the refuge with the following exceptions:

a. The refuge manager may designate up to 6 afternoon special youth or disabled hunter waterfowl hunts per season; and

b. The refuge manager may designate up to 3 days per week of afternoon waterfowl hunting for the general public after December 1.

* * * * *

Sacramento National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

8. You may enter or exit only at designated locations.

9. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

B. Upland Game Hunting. * * *

* * * * *

6. You may enter or exit only at designated locations.

7. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

* * * * *

Sutter National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

5. You may enter or exit only at designated locations.

6. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

B. Upland Game Hunting. * * *

* * * * *

5. You may enter or exit only at designated locations.

6. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

* * * * *

Tule Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Shooting hours end at 1:00 p.m. on all California portions of the refuge with the following exceptions:

a. The refuge manager may designate up to 6 afternoon special youth or disabled hunter waterfowl hunts per season; and

b. The refuge manager may designate up to 3 days per week of afternoon waterfowl hunting for the general public after December 1.

* * * * *

8. In § 32.27 Delaware by revising paragraphs A.5., A.7., B.3., the introductory text of paragraph C., paragraphs C.1., C.3., and C.4. and removing paragraphs A.8. and B.4 of Bombay Hook National Wildlife Refuge to read as follows:

§ 32.27 Delaware.

* * * * *

Bombay Hook National Wildlife Refuge

* * * * *

A. Hunting of Migratory Game Birds. * * *

* * * * *

5. The maximum number of hunters permitted per blind is as follows: West Waterfowl Area—4; South Waterfowl Area—3; Young Waterfowlers Area—2.

* * * * *

7. Waterfowl hunters may not possess more than 15 shotgun shells per day on the West and Young Waterfowlers Hunt Areas.

B. Upland Game Hunting. * * *

* * * * *

3. You may possess only approved nontoxic shot while in the field.

C. Big Game Hunting. We allow hunting of turkey and deer on designated areas of the refuge subject to the following conditions:

1. We require a refuge permit except on the South Upland Hunting Area.

* * * * *

3. We require a valid State permit for turkey hunting.

4. During firearms deer season, hunters must wear in a conspicuous manner as an outer layer on the head, chest, and back a minimum of 400 square inches (2,600 cm2) of solid-colored orange clothing or material.

* * * * *

9. In § 32.28 Florida by:

a. Revising paragraph D. of Chassahowitzka National Wildlife Refuge; and

b. Revising paragraphs A.1., A.5., and A.7. of Merritt Island National Wildlife Refuge to read as follows:

§ 32.28 Florida.

* * * * *

Chassahowitzka National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow fishing on the refuge year round subject to the following condition: You must fish in accordance with State regulations.

* * * * *

Merritt Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. You must possess a valid refuge hunting permit at all times while hunting on the refuge. In addition, we annually require a quota permit for hunt areas 1 and 4 from the beginning of the regular waterfowl season through December 31.

* * * * *

5. You must complete and carry proof of completing an approved hunter safety training course in all hunt areas.

* * * * *

7. The public may not enter the refuge between sunset and sunrise except: You may access the refuge for waterfowl hunting only after 4:00 a.m. each hunting day during waterfowl hunting season, and a valid refuge hunting permit must be in your possession.

* * * * *

10. In § 32.31 Idaho by:

a. Revising paragraph B. of Bear Lake National Wildlife Refuge;

b. Revising paragraph B. of Camas National Wildlife Refuge;

c. Revising paragraph B. of Kootenai National Wildlife Refuge; and

d. Revising paragraph B.2. of Minidoka National Wildlife Refuge to read as follows:

§ 32.31 Idaho.

* * * * *

Bear Lake National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of partridge, grouse, and cottontail rabbits, including pygmy rabbits, on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

* * * * *

Camas National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of pheasant and grouse on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

* * * * *

Kootenai National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of forest grouse on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

* * * * *

Minidoka National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. You may possess only approved nontoxic shot while in the field.

* * * * *

11. In § 32.32 Illinois by:

a. Revising paragraph D. of Chautauqua National Wildlife Refuge;

b. Revising paragraph A.4.and adding paragraph A.5. of Upper Mississippi River National Wildlife and Fish Refuge to read as follows:

§ 32.32 Illinois.

* * * * *

Chautauqua National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing on Lake Chautauqua from January 15 through October 15. You may not fish in the Waterfowl Hunting Area during waterfowl hunting season.

2. You may not leave private boats in refuge waters overnight.

3. We restrict motorboats to ''slow speed/minimum wake.''

4. The public may not enter Weis Lake on the Cameron-Billsbach Unit of Chautauqua National Wildlife Refuge from October 16 through January 14, to provide sanctuary for migratory birds.

* * * * *

Upper Mississippi River National Wildlife and Fish Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. On Pools 4 through 11, you may not place or leave decoys on the refuge during the time from ½ hour after the close of legal shooting hours, until 1 hour before the start of legal shooting hours.

5. This condition applies to Pools 4 through 11 only. We prohibit construction of permanent hunting blinds using manmade materials. You must remove all manmade blind materials from the refuge at the end of each day's hunt. Any blinds containing manmade materials left on the refuge are subject to immediate removal and disposal. Manmade materials include, but are not limited to: wooden pallets, lumber, railroad ties, fence posts (wooden or metal), wire, nails, staples, netting, or tarps. We allow you to leave only seasonal blinds, made entirely of natural vegetation and biodegradable twines, on the refuge. We consider all such blinds public property and open to use by any person on a first-come basis. We allow you to gather only willow, grasses, marsh vegetation, and dead wood on the ground from the refuge for blind-building materials. We prohibit cutting or removing any other refuge trees or vegetation.

* * * * *

12. In § 32.33 Indiana by revising paragraph D.1. of Muscatatuck National Wildlife Refuge to read as follows:

§ 32.33 Indiana.

* * * * *

Muscatatuck National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. You may fish from the bank and from nonmotorized boats on Stanfield Lake from May 15 through October 15. You may not boat at other times. Stanfield Lake is open to ice fishing when ice conditions permit.

* * * * *

13. In § 32.34 Iowa by revising the heading of Walnut Creek National Wildlife Refuge to read as follows and placing the listing in alphabetical order:

§ 32.34 Iowa.

* * * * *

Neal Smith National Wildlife Refuge

* * * * *

14. In § 32.37 Louisiana by:

a. Revising Atchafalaya National Wildlife Refuge;

b. Revising paragraphs B., C., and D. of Bayou Cocodrie National Wildlife Refuge;

c. Revising Cameron Prairie National Wildlife Refuge;

d. Removing paragraphs D.3. and D.4. of Grand Cote National Wildlife Refuge;

e. Revising the introductory text of paragraph A. of Lacassine National Wildlife Refuge;

f. Revising the introductory text of paragraph C. of Lake Ophelia National Wildlife Refuge; and

g. Revising paragraphs A., C., and D. of Mandalay National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

Atchafalaya National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, snipe, and woodcock on designated areas of the refuge subject to the following conditions:

1. Hunting must be in accordance with Sherburne Wildlife Management Area regulations.

2. For the Indian Bayou Area, we require an Army Corps of Engineer permit.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, raccoon, opossum, nutria, muskrat, mink, fox, bobcat, beaver, and otter on designated areas of the refuge subject to the following conditions:

1. Hunting must be in accordance with Sherburne Wildlife Management Area regulations.

2. For the Indian Bayou Area, we require an Army Corps of Engineer permit.

C. Big Game Hunting. We allow hunting of deer and turkey on designated areas of the refuge subject to the following conditions:

1. Hunting must be in accordance with Sherburne Wildlife Management Area regulations.

2. For the Indian Bayou Area, we require an Army Corps of Engineer permit.

D. Sport Fishing. We allow finfishing and shellfishing year round in accordance with Sherburne Wildlife Management Area regulations:

1. We require refuge permits for commercial shellfishing.

2. For the Indian Bayou Area, we require an Army Corps of Engineer permit for commercial shellfishing.

* * * * *

Bayou Cocodrie National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of squirrels, rabbit, raccoon, and coyote on designated areas of the refuge subject to the following condition: We require refuge permits.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require refuge permits.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. Each boat/vehicle entering the refuge must possess an entrance pass.

2. We allow fishing during daylight hours only.

3. We allow fishing on the Cross Bayou Cut and all tributaries that fill with water from Cocodrie Bayou during high water stages.

4. We prohibit camping.
5. We allow only cotton limb lines.
6. You may not use trotlines, slat traps, or nets while fishing.

* * * * *

Cameron Prairie National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds in designated areas of the refuge subject to the following conditions:

1. We require refuge permits.
2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the appropriate refuge brochure.

B. Upland Game Hunting. We allow upland game hunting in designated areas of the refuge subject to the following conditions:

1. We require refuge permits.
2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the appropriate refuge brochure.

C. Big Game Hunting. We allow hunting of white-tailed deer in designated areas of the refuge subject to the following conditions:

1. We require refuge permits.
2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the appropriate refuge brochure.

D. Sport Fishing. We allow sport fishing in designated areas of the refuge subject to the following condition: Any person entering, using, or occupying the refuge for fishing must abide by all terms and conditions in the appropriate refuge brochure.

* * * * *

Lacassine National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, duck, gallinules, and coots on designated areas of the refuge subject to the following conditions:

* * * * *

Lake Ophelia National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

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Mandalay National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds in designated areas of the refuge subject to the following condition: Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following condition: Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following condition: Any person entering, using, or occupying the refuge for fishing must abide by all terms and conditions in the refuge fishing brochure.

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15. In § 32.38 Maine by:

a. Alphabetically adding Lake Umbagog National Wildlife Refuge;

b. Revising paragraph D. of Rachel Carson National Wildlife Refuge; and

c. Revising paragraph D. of Sunkhaze Meadows National Wildlife Refuge to read as follows:

§ 32.38 Maine.

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Lake Umbagog National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, geese, common snipe, sora, Virginia rail, common moorhen, and woodcock on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.
2. Designated permanent blinds will be available by reservation. We allow no other permanent blinds. You must remove temporary blinds, boats, and decoys from the refuge following each day's hunt.
3. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back, a minimum of 400 square inches (2,600 cm^2) of solid-colored hunter orange clothing or material, except when hunting ducks or geese.
4. We allow pre-hunt scouting, however, we will not allow dogs during pre-hunt scouts.
5. We prohibit dog training.
6. You must unload all firearms outside of legal State hunting hours.
7. We prohibit the use of all-terrain vehicles (ATV's).
8. The Refuge will be open to hunting during the hours stipulated under Maine hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset.

B. Upland Game Hunting. We allow hunting of coyote, fox, raccoon, woodchuck, red squirrel, eastern gray squirrel, porcupine, skunk, American crow, showshoe hare, ring-necked pheasant, ruffed grouse, and northern bobwhite in designated areas subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.
2. You may only use pursuit or trailing dogs to hunt coyote or snowshoe hare.
3. We allow hunting of snowshoe hare with dogs from November 20 to January 1.
4. We allow hunting of coyote with dogs from October 20 to November 9.
5. We allow a maximum of four dogs per hunter.
6. Dogs may only be on the refuge when the hunter is present.
7. You must equip dogs used to hunt coyote with operational radiotelemetry collars. You must be in possession of a working radiotelemetry receiver that can detect and track the frequency(ies) emitted by each radio collar used.
8. We do not allow hunting for coyote and raccoon from ½ hour after sunset to ½ hour before sunrise.
9. We allow pre-hunt scouting, however, we do not allow dogs during pre-hunt scouts.
10. We prohibit dog training.
11. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back, a minimum of 400 square inches (2,600 cm^2) of solid-colored hunter orange clothing or material.
12. You must unload all firearms outside of legal State hunting hours.
13. We prohibit the use of all-terrain vehicles (ATV's).
14. The refuge will be open to hunting during the hours stipulated under Maine hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset.

C. Big Game Hunting. We allow hunting of white-tailed deer, moose, black bear, and wild turkey on designated areas of the refuge subject to the following conditions:

1. We allow bear hunting with dogs from October 20 to October 29.
2. You must equip dogs used to hunt bear with operational radiotelemetry collars. You must be in possession of a working radiotelemetry receiver that can detect and track the frequency(ies) emitted by each radio collar used.
3. We allow a maximum of four dogs per hunter.
4. Dogs may only be on the refuge when the hunter is present.
5. You must take the first bear you tree, except in the case of cubs or a sow with cubs.
6. You must report where you took the bear to the State of Maine.

7. We allow pre-hunt scouting, however, we will not allow dogs during pre-hunt scouts.

8. We prohibit dog training.

9. You may use only portable tree stands, and you must remove them from the refuge each day.

10. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back a minimum of 400 square inches (2,600 cm^2) of solid-colored hunter orange clothing or material, except when hunting turkey.

11. You must unload all firearms outside of legal State hunting hours.

12. We prohibit the use of all-terrain vehicles (ATV's).

13. The refuge will be open to hunting during the hours stipulated under Maine hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset.

D. Sport Fishing. [Reserved]

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Rachel Carson National Wildlife Refuge

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D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following condition: We allow fishing from sunrise to sunset.

Sunkhaze Meadows National Wildlife Refuge

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D. Sport Fishing. You may fish on the waters of and from the banks of Baker Brook, Birch Stream, Buzzy Brook, Johnson Brook, Little Birch Stream, Little Buzzy Brook, Sandy Stream, and Sunkhaze Stream.

16. In § 32.40 Massachusetts by:

a. Revising paragraph D. of Monomoy National Wildlife Refuge;

b. Adding paragraph D.3. to Nantucket National Wildlife Refuge; and

c. Revising the introductory text of paragraph B and revising paragraph B.3. and adding paragraph B.4. to Oxbow National Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

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Monomoy National Wildlife Refuge

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D. Sport Fishing. We allow fishing in designated areas of the refuge subject to the following condition: In addition to daytime fishing, we allow fishing after sunset in accordance with State regulations.

Nantucket National Wildlife Refuge

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D. Sport Fishing. * * *

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3. In addition to daytime fishing, we allow fishing after sunset in accordance with State regulations.

Oxbow National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of upland game birds, turkey, and small game on designated areas of the refuge subject to the following conditions:

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3. You may possess only approved nontoxic shot while in the field, except while hunting turkey.

4. Hunters will comply with all State hunting regulations.

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17. In § 32.42 Minnesota by adding introductory text to paragraph A, revising the introductory text of paragraph B. and adding paragraphs B.2., B.3., and C.3. to Big Stone National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

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Big Stone National Wildlife Refuge

A. Hunting of Migratory Game Birds. You may not hunt any migratory game birds on the refuge. You may retrieve waterfowl taken outside the refuge boundary up to 100 yards (90 m) inside the refuge.

B. Upland Game Hunting. You may hunt partridge, pheasant, wild turkey, gray and fox squirrel, cottontail and jack rabbit, red and gray fox, raccoon, and striped skunk on designated areas of the refuge subject to the following conditions:

* * * * *

2. You may hunt fox, raccoon, and striped skunk only during open seasons for other small game species. You may not use dogs while raccoon hunting.

3. You may hunt only turkey if you have a valid State turkey hunting permit in your possession.

C. Big Game Hunting. * * *

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3. You may hunt only deer if you have a valid State permit in your possession.

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18. In § 32.44 Missouri by revising paragraphs A., B., and C. of Big Muddy National Wildlife Refuge to read as follows:

§ 32.44 Missouri.

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Big Muddy National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas of the refuge subject to posted regulations and the following conditions:

1. Shotgun hunters may use only approved nontoxic shot while in the field.

2. You must remove all boats, decoys, and blinds from the refuge following each day's hunt except for blinds made entirely of marsh vegetation. You may not cut woody vegetation on the refuge for blinds.

B. Upland Game Hunting. We allow hunting of upland game animals on designated areas of the refuge subject to posted regulations and the following conditions:

1. You may use only approved nontoxic shot while hunting for upland game, except wild turkeys. You may use lead shot while hunting for wild turkey.

C. Big Game Hunting. We allow big game hunting on designated areas of the refuge subject to posted regulations and the following conditions:

1. You may not use tree spikes to help you climb trees or hunt on the refuge.

2. You must remove tree stands from the refuge within 24 hours of the close of the deer hunting season.

3. You may not hunt over or place on the refuge any salt or other mineral blocks.

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19. In § 32.47 Nevada by:

a. Revising paragraphs A. and B. of Ash Meadows National Wildlife Refuge;

b. Revising paragraphs A., B., and D.1. of Pahranagat National Wildlife Refuge; and

c. Adding paragraph A.3. and revising the introductory text of paragraph D. and paragraph D.2. of Ruby Lake National Wildlife Refuge.

§ 32.47 Nevada.

Ash Meadows National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens, snipe, and doves in accordance with State and refuge-specific regulations on designated areas of the refuge subject to the following conditions:

1. We allow hunting only on designated days.

2. We allow only nonmotorized boats or boats with electric motors on the refuge hunting area during the migratory waterfowl hunting season.

B. Upland Game Hunting. We allow hunting of quail and rabbit in accordance with State and refuge-specific regulations on designated areas of the refuge subject to the following conditions:

1. We allow hunting of quail and rabbit only on designated days during the regular State season for quail.

2. We prohibit the discharging of rifles or handguns.

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Pahranagat National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, moorhens, snipe, and doves in accordance with State and refuge-specific regulations on designated areas of the refuge subject to the following conditions:

1. We allow hunting only on designated days.

2. We allow only nonmotorized boats or boats with electric motors on the refuge hunting area during the migratory waterfowl hunting season.

B. Upland Game Hunting. We allow hunting of quail and rabbit in accordance with State and refuge-specific regulations on designated areas of the refuge subject to the following condition: We allow hunting of quail and rabbit only on designated days during the regular State season for quail.

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D. Sport Fishing. * * *

1. We allow fishing year round with exception of North Marsh, which we close October 1 to February 1.

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Ruby Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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3. The refuge is open to the public from 1 hour before sunrise to 2 hours after sunset.

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D. Sport Fishing. We allow fishing on designated areas of the refuge subject to Federal and State laws and the following conditions:

* * * * *

2. We allow fishing on dikes in the areas north of the Brown Dike and east of the Collection Ditch with the exception that you may fish by wading and from personal flotation devices (float tubes) in designated areas.

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20. In § 32.48 New Hampshire by adding Lake Umbagog National Wildlife Refuge to read as follows:

§ 32.48 New Hampshire.

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Lake Umbagog National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, geese, common snipe, and woodcock on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. Designated permanent blinds will be available by reservation. We will allow no other permanent blinds. You must remove temporary blinds, boats, and decoys from the refuge following each day's hunt.

3. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back, a minimum of 400 square inches (2,600 cm^2) of solid-colored hunter orange clothing or material, except when hunting ducks or geese.

4. You must unload all firearms outside of legal State hunting hours.

5. We prohibit use of all-terrain vehicles (ATV's).

6. We allow pre-hunt scouting, however, we do not permit dogs during pre-hunt scouts.

7. We prohibit dog training.

8. The refuge will be open to hunting during the hours stipulated under New Hampshire hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset.

B. Upland Game Hunting. We allow hunting of coyote, fisher, fox, raccoon, woodchuck, red squirrel, porcupine, skunk, weasel, American crow, mink, muskrat, snowshoe hare, ring-necked pheasant, ruffed grouse, and northern bobwhite in designated areas subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. You may only use pursuit or trailing dogs to hunt coyote or snowshoe hare.

3. We allow hunting of snowshoe hare from November 20 to January 1.

4. We allow hunting of coyote with dogs from October 20 to November 9.

5. We allow a maximum of four dogs per hunter.

6. Dogs may only be on the refuge when the hunter is present.

7. You must equip dogs used to hunt coyote with operational radiotelemetry collars. You must be in possession of a working radiotelemetry receiver that can detect and track the frequency(ies) emitted by each radio collar used.

8. We do not allow hunting for coyote and raccoon from ½ hour after sunset to ½ hour before sunrise.

9. We allow pre-hunt scouting, however, we will not allow dogs during pre-hunt scouts.

10. We prohibit dog training.

11. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back, a minimum of 400 square inches (2,600 cm^2) of solid-colored hunter orange clothing or material.

12. You must unload all firearms outside of legal State hunting hours.

13. We prohibit the use of all-terrain vehicles (ATV's).

14. The refuge will be open to hunting during the hours stipulated under New Hampshire hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset.

C. Big Game Hunting. We allow hunting of white-tailed deer, moose, and black bear on designated areas of the refuge subject to the following conditions:

1. We allow hunting of bear with dogs from October 20 to November 9.

2. You must equip dogs used to hunt bear with operational radiotelemetry collars. You must be in possession of a working radiotelemetry receiver that can detect and track the frequency(ies) emitted by each radio collar used.

3. We allow a maximum of four dogs per hunter.

4. Dogs may only be on the refuge when the hunter is present.

5. You must take the first bear you tree, except in the case of cubs or a sow with cubs.

6. You must report where you took the bear to the State of New Hampshire.

7. We allow pre-hunt scouting, however, we do not allow dogs during pre-hunt scouts.

8. We prohibit dog training.

9. You may use only portable tree stands, and you must remove them from the refuge each day.

10. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back, a minimum of 400 square inches (2,600 cm^2) of solid-colored hunter orange clothing or material.

11. You must unload all firearms outside of legal State hunting hours.

12. We prohibit the use of all-terrain vehicles (ATV's).

13. The refuge will be open to hunting during the hours stipulated under New Hampshire hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset.

D. Sport Fishing. [Reserved]

21. In § 32.49 New Jersey by revising paragraphs A., C.1., and D.1., revising the introductory text of paragraphs C. and D., and adding paragraph D.4 of Edwin B. Forsythe National Wildlife Refuge.

§ 32.49 New Jersey.

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Edwin B. Forsythe National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of waterfowl, coots, moorhens, and rails on designated areas of the refuge subject to the following conditions:

1. You must remove all hunting blind materials, boats, and decoys at the end of each hunting day. We do not allow permanent and pit blinds.

2. We may restrict use of Hunting Unit 3 of the Brigantine Division to certified Young Waterfowl Program trainees for up to 30 days as posted.

3. You may not possess more than 25 shells per day in Hunting Units A, B, and C in the Barnegat Division. You may not possess more than 50 shells per day in Unit 1 of the Brigantine Division.

4. In Hunting Unit B of the Barnegat Division, we restrict hunting to designated sites, with each site limited to one party of hunters. We require a minimum of six decoys per site.

5. In Hunting Unit D of the Barnegat Division, we require a minimum of six decoys and do not allow jump shooting. Access is by boat only; we do not allow foot access.

6. Access is by boat only in all Units except the portion of Unit A that is south of West Creek Dock Road, in the Barnegat Division, and Unit 5 in the Brigantine Division. You may access these Units by foot or boat.

7. You may occupy no sites or Units before 4:00 a.m. Access is by boat only.

8. You may possess only approved nontoxic shot while in the field.

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C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

1. We require a State permit for the appropriate New Jersey Deer Management Zone. You must have this permit stamped and validated in person at the Refuge Headquarters.

* * * * *

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow saltwater fishing from the Holgate beach and Little Beach Island with the exception of those areas posted as closed. We may close the Holgate Unit and Little Beach Island to all public use during the migratory bird nesting season. We require a saltwater fishing permit to fish from Little Beach Island. You may obtain permits from the Refuge Headquarters.

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4. We allow bank fishing and crabbing at designated areas. Contact the Refuge Headquarters for locations.

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22. In § 32.50 New Mexico by alphabetically adding San Andres National Wildlife Refuge to read as follows:

§ 32.50 New Mexico.

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San Andres National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of oryx or gemsbok (*Oryx gazella*) on designated areas of the refuge subject to the following conditions:

1. We require hunters to check in and out of the hunt area.

2. We require hunters to attend unexploded ordnance (UXO) training prior to entering the hunt area.

3. We require State permits and payment of a hunt fee.

D. Sport Fishing. [Reserved]

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23. In § 32.51 New York by revising paragraphs A.1., B.1., C., and D.4, deleting paragraph A.3, and redesignating paragraphs A.4., A.5., A.6., and A.7., and A.8. as paragraphs A.3., A.4., A.5., A.6., and A.7. of Iroquois National Wildlife Refuge to read as follows:

§ 32.51 New York.

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Iroquois National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. We require refuge permits.

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B. Upland Game Hunting. * * *

1. We require refuge permits.

* * * * *

C. Big Game Hunting. We allow hunting of deer and turkeys on designated areas of the refuge subject to the following condition: We require refuge permits.

D. Sport Fishing. * * *

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4. We do not allow the use of boats or other flotation devices with the exception that you may use nonmotorized boats on Oak Orchard Creek east of Route 63.

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24. In § 32.52 North Carolina by:

a. Revising paragraphs A.2., B.3., and C.3. of Pocosin Lakes National Wildlife Refuge; and

b. Revising paragraphs A. and B. of Roanoke River National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

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Pocosin Lakes National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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2. Firearms in transport by vehicle or boat under power must remain unloaded.

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B. Upland Game Hunting. * * *

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3. Firearms in transport by a vehicle or boat under power must remain unloaded.

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C. Big Game Hunting. * * *

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3. Firearms in transport by a vehicle or boat under power must remain unloaded.

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Roanoke River National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks and coots on designated areas of the refuge subject to the following condition: We require refuge permits.

B. Upland Game Hunting. We allow hunting of squirrel, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

1. We require refuge permits.

2. You may possess only approved nontoxic shot while in the field.

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25. In § 32.53 North Dakota by:

a. Revising paragraphs B. and C. of Lake Zahl National Wildlife Refuge; and

b. Revising paragraph C. of Upper Souris National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

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Lake Zahl National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of ring-necked pheasants, sharp-tailed grouse, and gray partridge on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. The upland game bird season opens annually on the day following the close of the regular firearm deer season through the end of the State season.

3. Hunters may enter the refuge on foot only.

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge subject to the following conditions:

1. We allow archery hunting through the day before the opening of the State waterfowl season and allow it following the deer gun season.

2. We allow deer gun hunting concurrent with the State deer gun season.

3. Hunters may enter the refuge on foot only.

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Upper Souris National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of big game on designated areas of the refuge as per State law with certain restrictions as posted.

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26. In § 32.54 Ohio by revising paragraph D. of Cedar Point National Wildlife Refuge to read as follows:

§ 32.54 Ohio.

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Cedar Point National Wildlife Refuge

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D. Sport Fishing. We allow sport fishing on designated areas of the refuge subject to the following conditions:

1. You may fish only during daylight hours during designated dates.

2. We do not allow boats or flotation devices.

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27. In § 32.55 Oklahoma by:

a. Revising paragraph A.4., adding paragraph B.5, and revising paragraph D. of Little River National Wildlife Refuge; and

b. Adding paragraph C.4. and revising paragraphs B.2. and D.9. of Tishomingo National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

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Little River National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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4. You must possess a refuge permit.

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B. Upland Game Hunting. * * *

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5. You must possess a refuge permit.

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D. Sport Fishing. We allow fishing on designated areas of the refuge.

1. We prohibit off-road vehicle use.

2. You must possess a refuge permit.

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Tishomingo National Wildlife Refuge

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B. Upland Game Hunting. * * *

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2. We allow only bows and arrows and shotguns using approved nontoxic shot.

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C. Big Game Hunting. * * *

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4. We prohibit baiting on the refuge and the Wildlife Management Unit.

D. Sport Fishing. * * *

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9. You may only take bait for personal use while fishing in the refuge in accordance with Oklahoma State law. We do not allow removal of bait from the refuge for commercial sales. You cannot release bait back into the water.

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28. In § 32.56 Oregon by:

a. Removing Ankeny National Wildlife Refuge;

b. Revising paragraphs A.2. and B.2. and adding paragraphs A.7. and B.5. of Cold Springs National Wildlife Refuge;

c. Revising the heading of ''Klamath Forest National Wildlife Refuge'' to read ''Klamath Marsh National Wildlife Refuge;''

d. Revising paragraphs A.2. and B.2. of McKay Creek National Wildlife Refuge;

e. Adding McNary National Wildlife Refuge; and

f. Revising paragraph A. of William L. Finley National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

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Cold Springs National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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2. We allow hunting only on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

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7. We allow hunting in the Memorial Marsh Unit by designated blind sites only.

B. Upland Game Hunting. * * *

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2. We allow hunting only on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

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5. We do not allow hunting of upland game birds until noon of each hunt day.

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Klamath Marsh National Wildlife Refuge

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McKay Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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2. We allow hunting only on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

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B. Upland Game Hunting. * * *

* * * * *

2. We allow hunting only on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

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McNary National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of doves on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. We allow dove hunting on the State Line and Juniper Canyon Units on legal hunt days in accordance with State regulations.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. We allow hunting on State Line and Juniper Canyon Units in accordance with State regulations.

C. Big Game Hunting. We allow deer hunting on designated areas of the refuge subject to the following conditions:

1. We allow shotguns and archery only.

2. We allow hunting on State Line and Juniper Canyon Units in accordance with State regulations.

D. Sport Fishing. [Reserved]

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William L. Finley National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

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29. In § 32.60 South Carolina by:

a. Revising paragraph D. of Cape Romain National Wildlife Refuge; and

b. Revising paragraphs C. and D. of Carolina Sandhills National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

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Cape Romain National Wildlife Refuge

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D. Sport Fishing. We allow fishing, crabbing, and shell fishing in accordance with State regulations, as specifically designated in refuge publications, and as posted. Except as posted, we close refuge islands at night. We do not allow shrimp baiting from refuge islands or above the low tide mark.

Carolina Sandhills National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer, turkey, and feral hogs on designated areas of the

refuge subject to the following condition: We require refuge permits.

D. Sport Fishing. We allow fishing on all areas of the refuge, except Martins Lake and those areas marked by signs as closed to the public for fishing, subject to the following conditions:

1. We allow fishing from ½ hour before sunrise to ½ hour before sunset.

2. We allow nonmotorized boats and boats with electric motors. You must hand load and unload boats except at designated boat ramps.

3. We do not allow fish baskets, net, set hooks, and trotlines.

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30. In § 32.61 South Dakota by:

a. Revising paragraph B. of Pocasse National Wildlife Refuge; and

b. Revising paragraphs B. and D. of Sand Lake National Wildlife Refuge to read as follows:

§ 32.61 South Dakota.

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Pocasse National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of pheasant, sharp-tailed grouse, and Hungarian partridge on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

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Sand Lake National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of sharp-tailed grouse, Hungarian partridge, and pheasant on designated areas of the refuge.

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D. Sport Fishing. We allow sport fishing in accordance with State law and as specifically designated in refuge publications.

31. In § 32.63 Texas by:

a. Revising paragraphs A., B., and C. of Balcones Canyonlands National Wildlife Refuge;

b. Alphabetically adding Lower Rio Grande Valley National Wildlife Refuge; and

c. Alphabetically adding Trinity River National Wildlife Refuge to read as follows:

§ 32.63 Texas.

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Balcones Canyonlands National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning, white-wing, rock, and Eurasian-collared doves on designated areas of the refuge subject to the following conditions:

1. The length of the hunting season will be concurrent with the State season in September and October.

2. We allow hunting in designated areas, from noon to sunset, Saturdays and Sundays.

3. You may possess only approved nontoxic shot while in the field.

4. We require refuge permits and payment of a hunt fee by all hunters.

5. We prohibit dogs.

6. All hunters must be 10 years old or older. An adult 21 years of age or older must supervise hunters ages 10–17 (inclusive).

7. We prohibit use or possession of alcohol.

8. We may immediately close the entire refuge or any portion thereof to hunting for the protection of resources, as determined by the refuge manager.

B. Upland Game Hunting. We allow hunting of turkey on designated areas of the refuge subject to the following conditions:

1. We allow hunting in November, December, and/or January.

2. We require hunters to check in and out of a hunt area.

3. We allow bows and arrows, shotguns, and rifles.

4. We may immediately close the entire refuge or any portion thereof to hunting for the protection of resources, as determined by the refuge manager.

5. Hunters must be at least 12 years of age. An adult 21 years of age or older must supervise hunters between the ages of 12 and 17 (inclusive).

6. The refuge will set bag limits.

7. We require hunters to visibly wear 400 square inches (2,600 cm^2) of hunter orange on the outermost layer of the head, chest and back, which must include a hunter orange hat or cap.

8. We require refuge permits and the payment of a hunt fee.

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following conditions:

1. We allow hunting in November, December, and/or January.

2. We require hunters to check in and out daily at designated check stations.

3. We allow bows and arrows, shotguns, and rifles.

4. We may immediately close to hunting the entire refuge or any portion thereof for the protection of resources as determined by the refuge manager.

5. Hunters must be at least 12 years of age. An adult 21 years of age or older must supervise hunters between the ages of 12 and 17 (inclusive).

6. The refuge will set bag limits.

7. We require hunters to wear 400 square inches (2,600 cm2) of hunter orange on the outermost layer of the head, chest, and back, which must include a hunter orange hat or cap.

8. We require refuge permits and the payment of a hunt fee.

* * * * *

Lower Rio Grande Valley National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning, white-winged, and white-tipped doves in the months of September, October, and November on designated areas of the refuge, subject to the following conditions:

1. We require a refuge permit and payment of a fee.

2. We limit hunting to the months of September, October, and November in accordance with the State hunting season.

3. We allow only shotguns.

4. You may possess only approved nontoxic shot while in the field.

5. All hunters must be 12 years of age or older. An adult 21 years old or older must accompany hunters 12–17 years of age.

6. You may park at designated locations only.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of white-tailed deer, feral hogs, and nilgai antelope on designated areas of the refuge subject to the following conditions:

1. We require a refuge permit and payment of a fee.

2. We will offer hunting during portions of the State hunting season.

3. We enforce a two-deer (one buck only) limit on white-tailed deer and no limit on feral hogs and nilgai antelope.

4. All hunters must be 12 years of age or older. An adult 21 years old or older must accompany hunters 12–17 years of age.

5. We will determine location and method of hunt each year.

6. You may park at designated locations only.

7. We prohibit the use of dogs and baiting for hunting.

D. Sport Fishing. [Reserved]

* * * * *

Trinity River National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. We allow fishing on Champion Lake subject to the following conditions:

1. We allow fishing only with pole and line, rod and reel, or hand-held line.

2. We do not allow the use of trotlines, setlines, bows and arrows, gigs, spears, or fish traps.

3. We do not allow use of frogs or turtles.

4. We allow fishing from sunrise to sunset.

5. We limit motors to a maximum of 10 horsepower. You may not fish or enter within 200 yards (180 m) of an established bird rookery from March through the end of May. Check at refuge headquarters for rookery location(s).

32. In § 32.65 Vermont by revising paragraphs A.1., A.2., A.4., A.5., C.1., C.4., and D. of Missisquoi National Wildlife Refuge to read as follows:

§ 32.65 Vermont.

* * * * *

Missisquoi National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. We require refuge permits to hunt in the Long Marsh Channel—Metcalfe Island Controlled Hunting Area, the Junior Waterfowl Hunting Area, and the Saxe's Pothole-Creek and Shad Island Pothole Hunting Area.

2. You may not possess more than 25 shells per day on the Long Marsh Channel-Metcalfe Island Controlled Hunting Area, the Junior Waterfowl Hunting Area, and the Saxe's Pothole-Creek and Shad Island Pothole Hunting Area.

* * * * *

4. Within any controlled hunting area, you must hunt within 100 feet (30 m) of the blind or blind stake for the area except to retrieve crippled birds.

5. You must hunt with one retriever per hunting party of up to two hunters per party within the Saxe's Pothole-Creek and Shad Island Pothole Hunting Area, the Long Marsh Channel-Metcalfe Island Hunting Area, and the Maquam Swamp Hunting Area.

* * * * *

C. Big Game Hunting. * * *

1. You may use only shotguns and muzzleloaders on that part of the refuge east of the Missisquoi River during the State regular season or on that part of the refuge north and east of Route 78 during the Youth Hunt.

* * * * *

4. You may use only portable tree stands. You may leave them in place during deer seasons with proper notation on the big game permit.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following condition: We allow fishing from refuge lands along Lake Champlain and the Missisquoi River, except from any refuge dike or from or within any refuge water management unit.

33. In § 32.66 Virginia by:

a. Adding paragraph D.3. of Back Bay National Wildlife Refuge;

b. Revising paragraph A. of Chincoteague National Wildlife Refuge; and

c. Adding the alphabetical listing of Mackay Island National Wildlife Refuge to read as follows:

§ 32.66 Virginia.

* * * * *

Back Bay National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

3. We require a refuge permit to fish in ''D'' Pool.

* * * * *

Chincoteague National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory waterfowl and rails on designated areas of the refuge subject to the following conditions:

1. We require a refuge permit to hunt in designated public hunting areas.

2. We allow guided hunting in designated areas of Wildcat Marsh with refuge-designated commercial guides.

* * * * *

Mackay Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge subject to the following condition: We require refuge permits.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing only from sunrise to sunset from March 15 through October 15.

2. You must attend all fishing lines.

3. We do not allow airboats.

* * * * *

34. In § 32.67 Washington by:

a. Alphabetically adding Arid Lands National Wildlife Refuge Complex;

b. Revising paragraphs A.1., A.3., and C. of Columbia National Wildlife Refuge;

c. Revising McNary National Wildlife Refuge;

d. Removing paragraphs A.4. and B.4., redesignating paragraphs A.5, A.6., and B.5. as A.4., A.5., and B.4. and revising newly redesignated paragraphs A.4., A.5., and B.4. of Toppenish National Wildlife Refuge; and

e. Revising paragraphs A. and D. of Willapa National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Arid Lands National Wildlife Refuge Complex

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on the Wahluke Wildlife Recreation Unit of the Complex subject to the following condition: You may possess only approved nontoxic shot while in the field.

B. Upland Game Hunting. We allow hunting of upland game on the Wahluke Wildlife Recreation Unit of the Complex subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. We allow only shotguns.

C. Big Game Hunting. We allow hunting of big game on the Wahluke Wildlife Recreation Unit of the Complex subject to the following condition: We allow only shotgun, muzzle loader, and archery hunting.

D. Sport Fishing. We allow fishing on designated areas of the Wahluke Wildlife Recreation Unit of the Complex.

Columbia National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. In Marsh Unit 1 and Farm Units 226–227, we allow hunting only on Wednesdays, Saturdays, Sundays, and Federal holidays.

* * * * *

3. In Marsh Unit 1, concurrent with the State's designated Youth Day prior to the opening of the waterfowl season, an adult at least 18 years of age who is not hunting must accompany hunters under 16 years of age.

* * * * *

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge subject to the following conditions:

1. We allow only shotgun and archery hunting.

2. We allow hunting of deer only during State seasons that run concurrently with the State waterfowl season.

* * * * *

McNary National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, doves, and snipe on designated areas of the refuge subject to the following conditions:

1. On the McNary Division, we allow hunting by refuge permit only. On the

first Saturday in December, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

2. We allow dove hunting only on the Wallula, Two Rivers, Peninsula, State line, and Juniper Canyon Units on legal hunt days in accordance with State regulations.

3. We allow waterfowl hunting on the Wallula and Two Rivers Units 7 days a week during State waterfowl season.

4. We allow waterfowl hunting on the Peninsula Unit Friday through Monday during State waterfowl season subject to the following condition: Hunting on the east side of the Peninsula and in the goose pits is by assigned blinds on a first-come, first-served basis.

5. The refuge is open from 5 a.m. to 1½ hours after sunset. You may not leave decoys and other personal property on the refuge overnight.

6. You may not possess more than 25 approved nontoxic shells while in the field.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

1. On the McNary Division, we allow hunting only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day. We do not allow hunting until noon of each hunt day. Hunting is for pheasant and quail only. On the first Saturday in December, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

2. You may not possess more than 25 approved nontoxic shot shells while in the field.

3. We allow upland game hunting on the Wallula, Two Rivers, State line, and Juniper Canyon Units in accordance with State regulations.

4. We do not allow hunting on the Peninsula Unit until noon on legal goose hunting days.

C. Big Game Hunting. We allow hunting of deer only on the Wallula, Two Rivers, Peninsula, State line, and Juniper Canyon Units subject to the following condition: We allow shotguns and archery only in accordance with State regulations.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. On the McNary Division, visiting hours are from sunrise to sunset. We do not allow the use of boats and other flotation devices.

2. We allow fishing only with hook and line.

3. We allow fishing on the Wallula, Two Rivers, and Peninsula Units in accordance with State regulations.

* * * * *

Toppenish National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Snipe hunters may possess only approved nontoxic shot while in the field.

5. On the Halvorson and Webb Units, you may hunt on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day only. On the Robbins Road Unit, you may hunt on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day only. Pumphouse, Isiri, Petty, and Chambers Units are open 7 days a week during waterfowl season.

B. Upland Game Hunting. * * *

* * * * *

4. On the Halvorson and Webb Units, you may hunt on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day only. On the Robbins Road Unit, you may hunt on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day only. Pumphouse, Isiri, Petty, and Chambers Units are open 7 days a week during waterfowl season.

* * * * *

Willapa National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, and coots on designated areas of Riekkola and Lewis Units, in accordance with State hunting regulations and subject to the following conditions:

1. Prior to entering the hunt area at the Riekkola Unit, we require you to obtain a refuge permit, pay a recreation user fee, and obtain a blind assignment.

2. At the Riekkola Unit, you may take ducks and coot only coincidental to hunting geese. We do not allow exclusive hunting of ducks in the Riekkola Unit.

3. We allow hunting in the Riekkola Unit only from established blinds on Wednesdays and Saturdays.

4. You may possess no more than 25 approved nontoxic shells per day while in the field.

* * * * *

D. *Sport Fishing.* We allow sport fishing along the shoreline of Willapa Bay and Bear River on refuge-owned lands in accordance with State regulations.

35. In § 32.68 West Virginia by adding paragraph C.2. in Canaan Valley National Wildlife Refuge to read as follows:

§ 32.68 West Virginia.

* * * * *

C. Big Game Hunting. * * *

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2. We allow shotgun and muzzle-loader hunting only with the possession of approved nontoxic shot size #4 or smaller for hunting of wild turkey. We prohibit rifle hunting.

* * * * *

36. In § 32.69 Wisconsin by revising paragraphs B.2., C.1., and C.2. of Necedah National Wildlife Refuge to read as follows:

§ 32.69 Wisconsin.

* * * * *

Necedah National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. During the spring turkey season, we allow unarmed hunters who have an unexpired spring turkey permit in their possession to scout the hunt area. We allow this scouting beginning on the Saturday immediately prior to the opening date listed on their State turkey hunting permit.

* * * * *

C. Big Game Hunting. * * *

1. You may not possess a loaded firearm or a nocked arrow on a bow within 50 feet (15 m) of the centerline of all public roads. Also, during the gun deer season, you may not possess a loaded firearm within 50 feet (15 m) of the center of refuge trails, nor may you discharge a gun from across, down, or alongside these trails.

2. You may not construct or use permanent blinds, stands, or ladders.

* * * * *

37. In § 32.71 United States Unincorporated Pacific Insular Possessions by revising paragraph D. of Johnston Atoll National Wildlife Refuge to read as follows:

§ 32.71 United States Unincorporated Pacific Insular Possessions.

Johnston Atoll National Wildlife Refuge.

* * * * *

D. Sport Fishing. We allow fishing only in accordance with posted regulations (Conservation of Natural Resources and Protection of Fish and Wildlife on Johnston Atoll National Wildlife Refuge), which are available at refuge headquarters. Other special restrictions apply on this refuge, and we outline them in the regulations.

* * * * *

Dated: June 20, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–16677 Filed 7–7–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 65, No. 132

Monday, July 10, 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

Submission for OMB Review; Comment Request

July 3, 2000

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Request for Release of Lien and/or Approval of Sale

OMB Control Number: 0572–0041.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA). It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. The RUS loan portfolio totals nearly $42 billion. RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended (RE Act). A 1949 amendment to the RE Act established the telephone program in RUS with the purpose of making loans to furnish and improve rural telephone service. Section 201 of the RE Act provides that loans shall not be made unless RUS finds and certifies that the security for the loan is reasonably adequate and that the loan will be repaid within the time agreed. In addition to providing loans and loan guarantees, one of RUS's main objectives is to safeguard loan security until the loan is repaid.

Need and Use of the Information: A borrower's assets provide the security for a Government loan. The selling of assets reduces the security and increases the risk of loss to the Government. RUS Form 793 allows the telephone program borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's system.

RUS telephone borrowers fill out the form to request RUS approval in order to sell capital assets. Specifics to the sale of capital assets, including the use of Form 793 and submission of supporting documentation, are covered in REA Bulletin 415–1, ''Sale of Property by Telephone Borrowers.'' If the information in Form 793 is not collected when capital assets are sold, the capital assets securing the Government's loans could be liquidated and the Government's security either eliminated entirely or diluted to an undesirable level. This increases the risk of loss to the Government in the case of a default.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 75.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 206.

Rural Utilities Service

Title: 7 CFR Part 1786, Prepayment of RUS Guaranteed and Insured Loans to Electric and Telephone Borrowers

OMB Control Number: 0572–0088.

Summary of Collection: The Rural Electrification (RE) Act of 1936, as amended, authorizes and empowers the Administrator of RUS to make loans in the several States and Territories of the United States for rural electrification and for the purpose of furnishing and improving electric and telephone service in rural areas and for the purpose of assisting electric borrowers to implement demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems. This information collection package contains the paperwork and reporting burden for 7 CFR Part 1786, subpart E, ''Discounted Prepayments on RUS Notes in the Event of a Merger of Certain RUS Electric Borrowers,'' subpart F, ''Discounted Prepayments on RUS Electric Loans,'' and subpart G, ''Refinancing and Prepayment of RUS Guaranteed Federal Financing Bank (FEB) Loans Pursuant to Section 306(C) of the RE Act.'' 7 CFR 1786, subparts E and F are authorized by Section 306(B) of the RE Act of 1936, as amended, and subpart G is authorized by Section 306(C) of the RE Act of 1936, as amended. 7 CFR Part 1786 also contains subpart B and C, for which authority has expired.

Need and Use of the Information: The overall goal of Subparts E and F is to allow RUS borrowers to prepay their RUS loan and the overall goal of Subpart G is to refinance. Subpart E allows certain electric borrowers to prepay outstanding RUS Notes at the Discounted Present Value of the RUS Notes with private financing. Subpart F allows borrowers to prepay, with private financing or internally generated funds, outstanding RUS Notes evidencing electric loans at the Discounted present value of the RUS Note. Subpart G allows the borrower of an electric or telephone loan made by the FEB and guaranteed by RUS to prepay and refinance a loan or an advance on the loan, or any portion of the loan or advance, after meeting certain conditions using the procedures prescribed in the borrower's

note. The information will be collected from borrowers requesting to prepay their notes and will be used to determine that the borrower is qualified to prepay under the authorizing statutes.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 28.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 62.

Rural Utilities Service

Title: Distance Learning and Telemedicine Loan and Grant Program (7 CFR 1703, Subpart D, E, F and G).

OMB Control Number: 0572–0096.

Summary of Collection: The Distance Learning and Telemedicine Loan and Grant (DLT) Program provides loans and grants for advanced telecommunications services to improve rural areas' access to educational and medical services.

Need and Use of the Information: The various forms and narrative statements required are collected from eligible applicants (7 CFR Section 1703.103) such as rural community facilities, schools, libraries, hospitals, and medical facilities. The purpose of this information is to determine such factors as: eligibility of the applicant; the specific nature of the proposed project; the purposes for which loan and grant funds will be used; project financial and technical feasibility; and compliance with applicable laws and regulations.

Description of Respondents: Business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 300.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 17,741.

Rural Utilities Service

Title: State Telecommunications Modernization Plan.

OMB Control Number: 0572–0104.

Summary of Collection: The Rural Electrification Loan Restructuring Act (RELRA, Pub. L. 103–129), November 1, 1993, amended the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (the RE Act). RELRA required that a State Telecommunications Modernization Plan (Modernization Plan or Plan), covering at a minimum the Rural Utilities (RUS) borrowers in a State, be prepared in a State or RUS could not make hardship or concurrent cost-of-money and Rural Telephone Bank (RTB) loans for construction in that State. The Modernization Plan must meet all the statutory requirements of RELRA (Part 1751, Subpart B). The minimum requirements for a Plan are: (1) The Plan must provide for the elimination of party line service; (2) The Plan must provide for the availability of telecommunications services for improved business, educational, and medical services; (3) The Plan must encourage computer networks and information highways for subscribers in rural areas; (4) The Plan must provide for: (i) Subscribers in rural areas to be able to receive through telephone lines: (a) Conference calling; (b) Video images; and (c) Data at a rate of 1 million bits of information per second; and, (ii) The proper routing of information to subscribers; (5) The plan must provide for uniform deployment schedules to ensure that advanced services are deployed at the same time in rural and non-rural areas; (6) The plan must provide for such additional requirements for service standards as may be required by the Administer.

Need and Use of the Information: Modernization Plans will be reviewed by the RUS telecommunications program staff to ensure that it complies with the requirements of the regulation. If the proposed Modernization Plan does comply, RUS will approve it and notify the developer of the approval. If not, RUS will make specific written comments and suggestions for modifying the proposed Modernization Plan so that it will comply with the requirements of the regulation. If the information is not collected, RUS' authority to make loans under the Rural Electrification Act will be restricted.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 350.

Rural Housing Service

Title: Rural Housing Loans, 7 CFR 1980–D.

OMB Control Number: 0575–0078.

Summary of Collection: The Rural Housing Service (RHS) is a credit agency for rural development for the U.S. Department of Agriculture. The purpose of the Guaranteed Rural Housing (GRH) program is to assist low and moderate-income individuals and families in acquiring or constructing a single-family residence in a rural area with loans made by private lenders. The information requested by RHS includes borrower financial information such as household income, assets and liabilities, and monthly expenses. RHS will collect information using several agency forms.

Need and use of the Information: All information collected is vital for RHS to determine if borrowers qualify for loans and to ensure they receive all assistance for which they are eligible. Information requested from lenders is required to ensure they are eligible to participate in the GRH program and are in compliance with OMB Circular A–129.

Description of Respondents: Individuals or households; business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 47,200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 154,250.

Rural Housing Service

Title: 7 CFR 1951–F, Analyzing Credit Needs and Graduation of Borrower.

OMB Control Number: 0575–0093.

Summary of Collection: Section 333 of the Consolidated Farm and Rural Development Act and Section 502 of the Housing Act of 1949, require the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBS), and the Farm Service Agency (FSA) to graduate their direct loan borrowers to other credit when they are able to do so. Graduation is an integral part of Agency lending, as Government loans are not meant to be extended beyond a borrower's need for subsidized rates of non-market terms. The notes, security instruments, or loan agreements of most borrowers require borrowers to refinance their Agency loans when other credit becomes available at reasonable rates and terms. If a borrower finds other credit is not available at reasonable rates and terms, the Agency will continue to review the borrower for possible graduation at periodic intervals. Information will be collected from the borrowers concerning their loans.

Need and Use of the Information: The information collected will include financial data such as amount of income, farm operating expenses, asset values, and liabilities. The information collected is submitted by FSA, RBS, or RHS borrowers to Agency offices. The information will be used in the Agency's effort to graduate direct borrowers to private credit with or without the use of Agency loan guarantees.

Description of Respondents: Individuals or households; Business or other for-profit; Farms; State, Local or Tribal Government.

Number of Respondents: 25,047.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 75,361.

Agricultural Marketing Service

Title: Farmers' Market Questionnaire.

OMB Control Number: 0581–0169.

Summary of Collection: The Transportation and Marketing (T&M) Program, Agricultural Marketing Service (AMS) conducts research to find better designs, development techniques, and operating methods for modern farmers' markets under the Agency's Wholesale and Alternative Markets Program. Recommendations are made available to local decision-makers interested in constructing modern farmers' markets to serve area producers and consumers. Individual studies are conducted in close cooperation with local interested parties. The information will be collected using form TM–6 ''Farmers' Market Questionnaire.''

Need and Use of the Information: Conventional wisdom states that the number and size of farmers' markets has grown over the last several years. Research has not been done to prove that point. The form submitted for approval will serve as a survey instrument to obtain a clearer picture of existing farmers' market structure to provide a basis for the future design of modern direct marketing facilities and will provide a measure of growth over the last 4 years. T&M researchers will survey by mail, with telephone follow-up, the managers of farmers' markets identified in the 2000 National Farmers' Market Directory. In addition, provision will be made for e-mail reporting. These markets represent a varied range of sizes, geographical locations, types, ownership, and structure. These markets will provide a valid overview of farmers' markets in the United States. Information such as the size of markets, operating times and days, retail and wholesale sales, management structure, and rules and regulations governing the markets are all important questions that need to be answered in the design of a new market. The information developed by this survey will support better designs, development techniques, and operating methods for modern farmers' markets and outline improvements that can be applied to revitalize existing markets.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 1,200.

Frequency of Responses: Reporting: Biennially.

Total Burden Hours: 300.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 00–17378 Filed 7–7–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Environmental Quality Incentives Program in the Five States Grazing Emphasis Geographic Priority Area

AGENCY: USDA—Natural Resources Conservation Service.

ACTION: ''Notice of a Finding of No Significant Impact''.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Environmental Quality Incentives Program in the Five States Grazing Emphasis Geographic Priority Area, Colfax, Curry, Harding, Lea, Mora, Quay, Roosevelt, San Miguel, Union Counties, New Mexico.

FOR FURTHER INFORMATION CONTACT: Rosendo Trevino, State Conservationist, Natural Resources Conservation Service, 6200 Jefferson NE, Albuquerque, New Mexico, 87109, telephone (505) 761–4400.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rosendo Trevino, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for land cover improvement. The planned works of improvement involve brush management, grazing management, and facilitating practices.

The Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rosendo Trevino.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**. (This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.912, Environmental Quality Incentives Program)

Dated: June 28, 2000.

Kenneth B. Leiting,

Acting State Conservationist.

[FR Doc. 00–17283 Filed 7–7–00; 8:45 am]

BILLING CODE 3410–16–P

AMTRAK REFORM COUNCIL

Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of Special Public Business Meeting in Washington, D.C., and a Special Outreach Hearing for the New England states in Burlington, VT.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997 (Reform Act), the Amtrak Reform Council (ARC) gives notice of a special public two-day meeting of the Council. The first day of the meeting will be a public business meeting at which the Council will receive presentations on Florida's state rail program for the development of passenger rail services; developments in financing rail passenger rail equipment; and Amtrak's marketing strategy and its relation to the Corporation's strategic business plan. (Portions of this discussion may be closed to the public if issues requiring the discussion of proprietary information are raised.). The Council staff will also discuss its progress in implementing the Council's work plan for FY 2000.

On the second day the Council will hold an Outreach Hearing for the New England states to discuss Amtrak's services in New England outside of rail services on the Northeast Corridor. The Council has invited various state transportation officials, rail corridor officials, and Amtrak executives. They will discuss aspects of current and future intercity railroad passenger service in New England outside of the Northeast Corridor.

DATES: The Business Meeting will be held on Monday, July 17, 2000 from 9:00 a.m. to 5:00 p.m. The Council will hold its Outreach Hearing in Burlington, VT on Tuesday, July 18, 2000 from 9:00 a.m. to 3:00 p.m. Both the Business Meeting and Hearing are open to the general public unless propriety information is introduced.

ADDRESSES: The July 17, 2000, Business Meeting will take place Room 2230 in the headquarters of Department of Transportation (Nassif Building), 400 Seventh Street, SW, Washington, DC 20590. The July 18, 2000, Outreach

Hearing will take place in the Best Western Windjammer, 1076 Williston Road, Burlington, VT 05403. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, SW, Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061. For information regarding ARC's upcoming events, the agenda for meetings, the ARC's First Annual Report, information about ARC Council Members and staff, and much more, you can also visit the Council's website at www.amtrakreformcouncil.gov.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (Reform Act), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the Reform Act provides: that the Council is to monitor cost savings from work rules established under new agreements between Amtrak and its labor unions; that the Council submit an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after a specified period, the Council has the authority to determine whether Amtrak can meet certain financial goals specified under the Reform Act and, if it finds that Amtrak cannot, to notify the President and the Congress.

The ARAA prescribes that the Council is to consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and the leadership of the Congress. Members serve a five-year term.

Issued in Washington, DC—July 3, 2000.

Thomas A. Till,

Executive Director.

[FR Doc. 00–17286 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–06–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

The United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 9 a.m. local time on July 18, 2000, at the Paterson, New Jersey, City Hall Council Chambers, Third Floor, 155 Market Street, Paterson, New Jersey.

The purpose of the meeting is to allow the CSB Investigation team to present to the Board, in open session, its findings of fact concerning the April 1998 explosion at Morton Specialty Chemical's Paterson facility.

The meeting will be open to the public, and public comments will be accepted following the presentation by investigators.

For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of External Relations, (202) 261–7600, or visit our website at: *http://www.chemsafety.gov.*

Christopher W. Warner,

Chief Operating Officer.

[FR Doc. 00–17438 Filed 7–5–00; 5:03 pm]

BILLING CODE 6351–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070500B]

Information Needed for Wreckfish Share Transfer

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

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, 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 this continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 8, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington, DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert Sadler, Southeast Regional Office, 9721 Executive Center Drive, St. Petersburg, Florida 33702, phone 727–570–5326.

SUPPLEMENTARY INFORMATION:

I. Abstract

This mandatory reporting requirement expires November 30, 2000, and is being renewed under authority of 50 CFR Part 622.4. The wreckfish fishery for the South Atlantic is managed under an Individual Transferable Quota System. Under this system fishermen are issued a share of the fishery and an individual annual quota. Shares are issued by certificate and may be bought and sold. Buying and selling of shares are not completed until the transfer is recorded by the National Marine Fisheries Service (NMFS). The information in this collection is necessary so the NMFS can record the sale and thereby monitor the fishery to provide for better conservation and management.

II. Method of Collection

When shares in the wreckfish fishery are sold, information concerning the sale is recorded on the back of the share certificate and sent to the NMFS. The transfer of ownership is recorded and new share certificates issued.

III. Data

OMB Number: 0648–0262.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit, individuals.

Estimated Number of Respondents: 4.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1 hour.

Estimated Total Annual Cost to Public: Shareholders are charged for the administrative cost of the share transfer. This annual cost is expected to be $160.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 30, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17372 Filed 7–7–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070500A]

State of Alaska Commercial Operator's Annual Report (COAR)

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

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 8, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington, DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, telephone number 907–586–7008.

SUPPLEMENTARY INFORMATION:

I. Abstract

Existing recordkeeping and reporting requirements for participants in the groundfish fisheries of the exclusive economic zone off Alaska (Bering Sea and Aleutian Islands and the Gulf of Alaska) would be revised to require owners of catcher/processors and motherships to complete the State of Alaska, Department of Fish and Game (ADF&G) Commercial Operator's Annual Report (COAR), which provides information on ex-vessel and first wholesale values for statewide fish and shellfish products. This information currently is submitted to ADF&G by shoreside processors under State of Alaska regulations. The intent of this data collection is to require at-sea groundfish processors to submit these reports as well.

II. Method of Collection

ADF&G would provide the COAR to each mothership and catcher/processor on an annual basis to collect information from the previous year. The completed COAR and certification page would be sent by the processor to ADF&G for computer data entry. If no receipt or production took place, the processor would submit only a certification page that indicates no receipt or production took place for that year. Use of the COAR information would be coordinated between NMFS and the State of Alaska.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 134.

Estimated Time Per Response: 8 hours.

Estimated Total Annual Burden Hours: 1,072.

Estimated Total Annual Cost to Public: $268.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 30, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17373; Filed 7–7–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

July 3, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Upon the request of the Government of the Dominican Republic, the U.S. Government has agreed to increase the current Guaranteed Access Levels for textile products in Categories 338/638, 339/639 and 633.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also

see 64 FR 50495, published on September 17, 1999.

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 3, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on July 10, 2000, you are directed to increase the Guaranteed Access Levels for the categories listed below for the period beginning on January 1, 2000 and extending through December 31, 2000.

Category	Guaranteed access level
338/638	5,150,000 dozen.
339/639	3,150,000 dozen.
633	100,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–17288 Filed 7–7–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Headquarters Air Force Recruiting Service announces the proposed extension of a currently 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 a 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 September 8, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of Defense, HQ AFRS/RSOC, 550 D Street West, Suite 1, Randolph AFB, TX 78150–4527.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call HQ AFRS/RSOC, Officer Accessions Branch, at (210) 652–4334.

Title, Associated Form, and OMB Number: Air Force Officer Training School Accession Forms, AETC Forms 1413 and 1422, OMB Number 0701–0080.

Needs and Uses: These forms are used by Air Force field recruiters and education counselors in the processing of Officer Training School (OTS) applications.

Affected Public: Civilian and Active Duty OTS Applicants.

Annual Burden Hours: 2,200.

Number of Respondents: 1,700.

Responses Per Respondent: 1.

Average Burden Per Response: 1 Hour (AETC Form 1413)/ 2 Hours (AETC Form 1422).

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are civilian and active-duty candidates applying for a commission in the United States Air Force. These forms provide pertinent information to facilitate selection of candidates for a commission.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–17284 Filed 7–7–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Naval Research Advisory Committee will meet to discuss basic and advanced research and technology. All sessions of the meetings will be devoted to briefings, discussions and technical examination of information related to an assessment of current and projected operational requirements, deficiencies and vulnerabilities of the Navy and Marine Corps command and control systems in order to recommend a Department of the Navy strategy for developing a next generation maritime command and control capability, and an examination of quality of work life issues for Sailors and Marines in order to anticipate what they will be for the 21st century and recommend Navy and Marine Corps responses to the new challenges.

DATES: The meetings will be held on Monday, July 17 through Friday, July 21, 2000, from 8 a.m. to 5 p.m.; Monday, July 24 through Thursday, July 27, 2000, from 8 a.m. to 5 p.m.; and Friday, July 28, 2000, from 8:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Space and Naval Warfare Systems Center San Diego, 53560 Hull Street, San Diego, California.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of meetings is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meetings will be devoted to briefings, discussions and technical examination of information related to an assessment of command and control technical options, including technical risk/benefits and functional ramifications; examination of lessons learned from the naval operating forces in the context of network-centric options; identification of information infrastructure framework to support advanced command, control communications, computers, intelligence, surveillance and reconnaissance (C4ISR) concepts and mission capabilities; identification of emerging science and technology opportunities to meet joint command center C4ISR requirements; assessment

of historical and current quality of work life areas and institutional responses; identification of quality of work life issues that arise as consequences of changes in population characteristics and job demands; determination of quality of work life requirements for the 21st century; evaluation of analytical quality of work life assessment methods for identifying the impact of problems and measuring the impact of efforts for problem mitigation; assessment of the current institutionalized responses to emerging challenges; and assessment of the focus areas. These briefings and discussions will contain classified and proprietary information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), 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 5 U.S.C. section 552b(c)(1) and (4).

Dated: June 30, 2000.

C.G. Carlson,

Major, U.S. Marine Corps, Alternate Federal Register Liaison Officer.

[FR Doc. 00–17367 Filed 7–7–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 9, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L._Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 3, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Written Request for Assistance or Application for Client Assistance Program.

Frequency: 3-year cycle for State Assurances or plan for CAP formula grant.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 9.

Abstract: This document is used by States to request funds to establish and carry out Client Assistance Programs (CAP). CAP is mandated by the Rehabilitation Act of 1973, as amended (Act), to assist vocational rehabilitation clients and applicants in their relationships with projects, programs, and services provided under the Act.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–17285 Filed 7–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Web-based Education Commission; Hearing

AGENCY: Office of Postsecondary Education, Education.

SUMMARY: This notice announces the next hearing of the Web-based Education Commission. Notice of this hearing is required under Section 10 (a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend this hearing.

DATES: The hearing will be held on July 19–20, 2000. The session on July 19 is scheduled for 1 p.m.–5 p.m. The session on July 20 is scheduled for 9 a.m.–12 noon. Both sessions will be held on Capitol Hill in room 628 of the Dirksen Senate Office Building.

FOR FURTHER INFORMATION CONTACT: David Byer, Executive Director, Web-based Education Commission, U.S. Department of Education, 1990 K Street, NW, Washington, DC 20006–8533. Telephone: (202) 219–7045. Fax: (202) 502–7675.

Email: web_commission@ed.gov.

SUPPLEMENTARY INFORMATION: The Web-based Education Commission is authorized by Title VIII, Part J of the Higher Education Amendments of 1998, as amended by the Fiscal 2000 Appropriations Act for the Departments of Labor, Health, and Human Services, and Education, and Related Agencies. The Commission is required to conduct a thorough study to assess the critical pedagogical and policy issues affecting the creation and use of web-based and other technology-mediated content and learning strategies to transform and improve teaching and achievement at the K–12 and postsecondary education levels. The Commission must issue a

final report to the President and the Congress, not later than 12 months after the first meeting of the Commission, which occurred November 16–17, 1999. The final report will contain a detailed statement of the Commission's findings and conclusions, as well as recommendations.

The July 19–20 hearing will cover a range of higher education technology-related issues. The hearing will examine online access, courses and programs, accreditation and assessment, distributive learning, costs and financial assistance, postsecondary education regulations, faculty issues, and the postsecondary education marketplace.

The hearing is open to the public. Records are kept of all Commission proceedings and are available for public inspection at the office of the Web-based Education Commission, Room 6131, 1990 K Street, NW, Washington, DC 20006–8533, from the hours of 9 a.m. to 5:30 p.m.

Assistance to Individuals With Disabilities: The hearing site is accessible to individuals with disabilities. Individuals who will need an auxiliary aid or service to participate in the hearing (*e.g.*, interpreting services, assistive listening devices, or materials in alternative format) should contact the person listed in this notice at least two weeks before the scheduled hearing date. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news/html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previously mentioned sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/indes.html.*

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–17291 Filed 7–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Student Assistance General Provisions, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Pell Grant, and Leveraging Educational Assistance Partnership Programs

AGENCY: Department of Education.

ACTION: Notice; deadline and submission dates for receipt of applications, reports, and other documents for the 2000–2001 award year.

SUMMARY: The Secretary announces the deadline and submission dates for receiving documents from persons applying for assistance under the Federal Perkins Loan, Federal Work-Study (FWS), Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Family Education Loan (FFEL), William D. Ford Federal Direct Loan (Direct Loan), Federal Pell Grant, and Leveraging Educational Assistance Partnership (LEAP) programs for the 2000–2001 award year.

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan, FWS, FSEOG, FFEL, Direct Loan, Federal Pell Grant, and LEAP programs, administered by the U.S. Department of Education (Department), provide assistance to students attending eligible institutions of higher education to help them pay for their educational costs.

A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs)

Who Submits?	What is Submitted?	Where is it Submitted?	What is the Deadline Date for Receipt?
Student	Free Application for Federal Student Aid (FAFSA) on the Web, Renewal FAFSA on the Web, or FAFSA Express electronic application	Electronically to the Department's Central Processing System (CPS)	July 2, 2001*
	Signature Page (if required)	The address printed on the signature page	August 16, 2001
Student through an Institution	An electronic original or renewal application	Electronically to the Department's Central Processing System (CPS)	July 2, 2001*
Student	A paper original Free Application for Federal Student Aid (FAFSA) or paper Renewal FAFSA	The address printed on the FAFSA, Renewal FAFSA, or envelope provided with the form	July 2, 2001
Student through an Institution	Electronic corrections and duplicate requests	Electronically to the Department's Central Processing System (CPS)	August 27, 2001*
Student	Corrections submitted using Part 2 of a SAR	The address printed on Part 2 of the SAR	August 16, 2001
Student	Change of address, change of institutions, and duplicate requests	The address printed on Part 2 of the SAR	August 16, 2001
		The Federal Student Aid Information Center by calling 1-800-433-3243	August 27, 2001

A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs)

Who Submits?	What is Submitted?	Where is it Submitted?	What is the Deadline Date for Receipt?
Student	Valid SAR	Institution	The earlier of: - the student's last date of enrollment; or - August 31, 2001
Student Through the Central Processing System	Valid ISIR****	Institution receives ISIR from the Department's Central Processing System (CPS)	
Student	Verification documents	Institution	The earlier of:** - 90 days after the student's last date of enrollment; or - August 31, 2001
Student	Verified SAR	Institution	The earlier of:*** - 90 days after the student's last date of enrollment; or - August 31, 2001
Student Through the Central Processing System	Verified ISIR****	Institution receives ISIR from the Department's Central Processing System (CPS)	

* The deadline for electronic transactions is 7:00 PM (Central Time) on the deadline date. Transmissions must be completed and accepted by 7:00 PM to meet the deadline. If transmissions are started before 7:00 PM but are not completed until after 7:00 PM, those transmissions will not meet the deadline. In addition, any transmission picked up on or just prior to the deadline date that gets rejected may not be able to be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the reject.

** Although the Department has set this deadline date for the submission of verification documents to the institution, if corrections are required, the earlier deadline dates for submission of paper or electronic corrections must still be met.

*** The institution must have already received a SAR or ISIR with an eligible EFC while the student was enrolled and eligible for payment. Students completing verification while no longer enrolled will be paid based on the higher of the two EFCs.

****For this purpose, the date the ISIR transaction was processed by the Central Processing System is considered to be the date the institution received the ISIR.

3

The following table provides the earliest submission and deadline dates for submitting Federal Pell Grant Disbursement Records to the Department's Recipient Financial Management System (RFMS). The 2000–

2001 award year is the second year of RFMS. A disbursement record: (1) reports a disbursement or expected disbursement for each student, and (2) requests funds for those institutions that participate in the Just-in-Time payment method pilot. The ''regular'' disbursement record includes an origination record unique identifier and the amount and date of the disbursement. RFMS uses totals of the accepted disbursement record data in the funding process as either the basis for adjusting an institution's authorization level or as a request for funds. An institution may submit a disbursement record earlier than the reported disbursement date in the record. The Department considers a disbursement of Federal Pell Grant funds to have occurred on the earlier of the date that the institution: (a) credits a student's account at the institution's general ledger or any subledger of the general ledger, or (b) pays a student directly with funds received from the Department. The Department considers a disbursement to have occurred even if institutional funds are used in advance of receiving the program funds from the Department (34 CFR ?? 668.164(a)).

Table B provides the earliest date an institution can submit a disbursement record to the Department. Any disbursement record received prior to the earliest submission date is rejected. Table B also includes the latest date an institution may submit a disbursement record. The Department may impose an adverse action such as a fine or other penalty for an institution's failure to submit a Federal Pell Grant disbursement record within the required 30-day timeframe. Also, failing to submit a disbursement record within the required 30-day timeframe may result in an audit or program review finding for an institution.

B. Earliest Submission and Deadline Dates for Submitting Federal Pell Grant Disbursement Records			
Who Submits?	What is Submitted?	Where is it Submitted?	What is the Earliest Submission and Deadline Date for Receipt?
Institution	At least one acceptable disbursement record must be submitted for each Federal Pell Grant recipient at the institution by: Electronic Data Exchange (EDE)*	To RFMS using EDE or custom software: Title IV Wide Area Network	An institution may submit disbursement records as early as June 21, 2000, but can not submit a disbursement record any earlier than: (a) 30 calendar days prior to the disbursement date under the Advance payment method; (b) 5 calendar days prior to the disbursement date under the Just-in-time payment method; or (c) the date of disbursement under the Reimbursement or Cash Monitoring payment Methods. An institution is required to submit a disbursement record not later than the earlier of: (a) 30 calendar days after the institution - makes a payment; or - becomes aware of the need to make an adjustment to previously reported disbursement data; or (b) October 1, 2001.

B. Earliest Submission and Deadline Dates for Submitting Federal Pell Grant Disbursement Records

Who Submits?	What is Submitted?	Where is it Submitted?	What is Deadline Date for Receipt?
Institution	At least one acceptable disbursement record must be submitted for each Federal Pell Grant recipient at the institution by: Electronic Data Exchange (EDE)*	To RFMS using EDE or custom software: Title IV Wide Area Network	After October 1, 2001, an institution may submit a disbursement record only: (a) for a downward adjustment of a previously reported award; or (b) based upon a program review or initial audit finding per 34 CFR 690.83.
	Requests for Year-To-Date Records	1. Pell Grant User Support Hotline: 1-800-474-7268 2. http://www.pellgrantsonline.ed.gov 3. Title IV Wide Area Network	August 16, 2001**
	Request for administrative relief based on a natural disaster or an administrative error by the Department or Departmental contractors	U.S. Department of Education Institutional Financial Management Division, AFMS P.O. Box 23781 Washington, D.C. 20026-0781	January 31, 2002

* An institution must ensure that its transmission of disbursement records is completed before midnight (local time at the institution's EDE destination point) on October 1, 2001.

** Year-To-Date records may be requested after this date, however, there may not be sufficient time for institutions to receive the file, create a disbursement record batch and submit to the Department by the October 1, 2001 deadline date for receipt of all 2000-2001 requests for payment.

NOTE: RFMS must accept a student origination record for a student from an institution before it accepts a disbursement record from the institution for that student. An institution may submit an origination and a disbursement record for a student in the same transmission.

Proof of Delivery

The Department accepts as proof of delivery, if the documents were submitted by mail or by non-U.S. Postal Service courier, one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly-dated U.S. Postal Service postmark.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method of proof of mailing, check with the post office at which the submission was mailed. The Department strongly encourages the use of First Class Mail.

(3) A dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

When submitting a written request for administrative relief, the Department accepts commercial couriers or hand deliveries between 8 a.m. and 4:30 p.m. Eastern Time, Monday through Friday except Federal holidays. The address for hand deliveries is listed in Table B.

Other Sources for Detailed Information on the Application and Automated Processes

A more detailed discussion of the student application process for the Federal Pell Grant Program is contained in the *2000–2001 Student Guide, Funding Your Education,* the *2000–2001 High School Counselor's Handbook, A Guide to 2000–2001 SARs and ISIRs,* and the *2000–2001 Student Financial Aid Handbook.* A more detailed discussion of the institutional reporting requirements for the Federal Pell Grant Program is contained in the *Federal Student Financial Aid Handbook* and the Information for Financial Aid Professionals web site at *http://www.ifap.ed.gov.*

Applicable Regulations

The following regulations apply: (1) Federal Pell Grant Program, 34 CFR part 690, (2) Student Assistance General Provisions, 34 CFR part 668, and (3) Institutional Eligibility, 34 CFR part 600.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Butler, Program Specialist, U.S. Department of Education, Office of Student Financial Assistance Programs, 400 Maryland Avenue, SW (ROB–3, Room 3045), Washington, DC 20202–5447. Telephone: (202) 708–8242. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of Alternate Format Center, U.S. Department of Education, 400 Maryland Avenue, SW (Switzer Bldg., Room 1000), Washington, DC 20202–4560. Telephone: (202) 260–9895.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ifap.ed.gov/csb_html/fedlreg.htm

To use the PDF, you must have Adobe Acrobat Reader, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 421–429, 1070a, 1070b–1070b–3, 1070c–1070c–4, 1071–1087–2, 1087a, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.
(Catalog of Federal Domestic Assistance numbers: 84.007 Federal Supplemental Educational Opportunity Grant (FSEOG) Program; 84.032 Federal Family Education Loan (FFEL) Programs; 84.033 Federal Work-Study (FWS) Program; 84.038 Federal Perkins (Perkins) Loans; 84.063) Federal Pell Grant (Pell) Program; 84.069 Leveraging Educational Assistance Partnership (LEAP) Program; and 84.268 William D. Ford Federal Direct Loan (Direct Loan) Programs)

Dated: July 5, 2000.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

[FR Doc. 00–17383 Filed 7–7–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–363–019]

El Paso Natural Gas Company; Notice of Implementation Filing

July 3, 2000.

Take notice that on June 28, 2000, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, with an effective date of July 1, 2000:

Fourth Revised Sheet No. 37
Fourth Revised Sheet No. 38
Fourth Revised Sheet No. 310
Fourth Revised Sheet No. 320

El Paso states that the filing is being made in compliance with the Commission's order issued November 10, 1999 at Docket No. RP95–363–002, *et al.*

El Paso states that the filing implements the pro forma tariff rates and provisions applicable to South California Edison Company contained in El Paso's August 4, 1999 Offer of Settlement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17325 Filed 7–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–359–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

July 3, 2000.

Take notice that on June 29, 2000, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective July 31, 2000.

Fourteenth Revised Sheet No. 1
Fourth Revised Sheet No. 4000
Second Revised Sheet No. 4001
Original Sheet No. 4002
Original Sheet No. 4003

Koch states that it is proposing to create a new auction process for its

Interruptible Storage Service (ISS) and Parking and Lending Service (PAL). The proposed tariff changes will create an interactive auction whereby interested shippers will be able to bid on ISS and PAL capacity and thus, will provide a more efficient process and greater price transparency to Koch's customers. Koch states that any PAL and ISS transaction beginning in future months will be included in the new auction process, however, any transaction involving the cash market will not be included.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

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, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17326 Filed 7–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2670–000]

MultiFuels Marketing Company; Notice of Issuance of Order

July 3, 2000.

MultiFuels Marketing Company (MultiFuels) submitted for filing a rate schedule under which MultiFuels will engage in wholesale electric power and energy transactions as a marketer. MultiFuels also requested waiver of various Commission regulations. In particular, MultiFuels requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by MultiFuels.

On June 27, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs, and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MultiFuels should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, MultiFuels is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful objective within the corporate purposes of MultiFuels, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MultiFuels issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 27, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17273 Filed 7–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–398–000]

Reliant Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

July 3, 2000.

Take notice that on June 29, 2000, Reliant Energy Gas Transmission Company (REGT), 111 Louisiana Street, Houston, Texas 77002–5231, filed a request with the Commission in Docket No. CP00–398–000, pursuant to Section 157.205, 157.211 and/or 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon certain facilities in Arkansas authorized in blanket certificates issued in Docket Nos. CP82–384–000 and CP82–384–001, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

REGT proposes to abandon Line KM–50, in its entirety, in Union County, Arkansas. REGT proposes to sell and transfer this line at net book value to Reliant Energy Arkla, a distribution division of Reliant Energy Incorporated (Arkla). Arkla will operate this segment of line as part of its low pressure distribution system. Net book value of this 2-inch line is $6,418.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 00–17324 Filed 7–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2429–000]

Unicom Energy, Inc.; Notice of Issuance of Order

July 3, 2000.

Unicom Energy, Inc. (Unicom) filed with the Commission a rate schedule in the above-captioned proceeding, under which Unicom will engage in wholesale electric power and energy transactions at market-based rates, and for certain

waivers and authorizations. In particular, Unicom also requested in its application that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Unicom. On July 28, 2000, the Commission issued an order that accepted the rate schedule for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's June 28, 2000 Order granted, approved Unicom's request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Unicom should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Unicom is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Unicom, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approved of Unicom's issuances of securities or assumptions of liabilities.* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 28, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. This issuance may also be viewed on the Internet at *http:/www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17274 Filed 7–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–185–000, et al.]

FPL Energy Cape, LLC, et al.; Electric Rate and Corporate Regulation Filings

July 3, 2000.

Take notice that the following filings have been made with the Commission:

1. FPL Energy Cape, LLC

[Docket No. EG00–185–000]

Take notice that on June 28, 2000, FPL Energy Cape, LLC, 100 Middle Street, Portland Maine 04101, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

FPL Energy Cape, LLC, a Delaware limited liability company proposes to engage in the business of owning and operating the Cape Station, consisting of two combustion turbine units in South Portland, Maine. The Maine Public Utilities Commission has found that allowing these facilities to be eligible facilities will benefit consumers, is in the public interest and does not violate state law. *Central Maine Power Company,* Docket No. 98–058, Nov. 25, 1998. The applicant seeks a determination of its exempt wholesale generator status. All electric energy sold by the applicant will be sold exclusively at wholesale.

Comment date: July 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Automated Power Exchange, Inc.

[Docket No. ER00–1439–002]

Take notice that on June 29, 2000, Automated Power Exchange, Inc. (APX) tendered for filing a revised annual report for 1999.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Electric Cooperative, Inc., Complainant, v. Pennsylvania Electric Company, doing business as GPU Energy, Respondent.

[Docket No. EL00–88–000]

Take notice that on June 30, 2000, Allegheny Electric Cooperative, Inc. (Allegheny), tendered for filing in the above-referenced docket a complaint under Section 206 of the Federal Power Act against Pennsylvania Electric Company (Penelec) concerning the wholesale rates and charges Penelec collects from Allegheny pursuant to a 1993 Wheeling and Supplemental Power Agreement between Allegheny and Penelec.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall also be filed on or before July 20, 2000.

4. Nevada Power Company and Sierra Pacific Power Company

[Docket No. ER00–2015–002; and Docket No. ER00–2018–002]

Take notice that on June 29, 2000, Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra), tendered for filing pursuant to Section 205 of the Federal Power Act and the Commission's Order in the above-referenced proceeding dated May 31, 2000, nine revised Transition Power Purchase Contracts that will apply to sales from the divested generation to Nevada Power and Sierra. The revisions are intended to comply with the requirement in the Commission's May 31, Order regarding the notice that must be given of the amount of capacity taken under the contracts. With respect to four of the contracts, the revisions also include language designed to implement the Request for Rehearing of the May 31, Order filed by Nevada Power and Sierra.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Alcoa Power Generating Inc.

[Docket No. ER00–2972–000]

Take notice that on June 28, 2000, Alcoa Power Generating Inc. (APGI) tendered for a filing service agreement between Aquila Energy Marketing Corporation and APGI under APGI's Market Rate Tariff No. 1 (MR–1). This Tariff was accepted for filing by the Commission on July 13, 1999, in Docket No. ER99–2932–000.

The service agreement with Aquila Energy Marketing Corporation is proposed to be effective June 1, 2000.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Southwest Power Pool, Inc.

[Docket No. ER00–2973–000]

Take notice that on June 28, 2000, Southwest Power Pool, Inc. (SPP), on behalf of its members, tendered for filing an executed signature page to the SPP Membership Agreement signed by Southwestern Public Service Company (SPS), and revised sheets to its currently

effective tariff in order to reflect a change in the revenue requirements and transmission loss factor for SPS, and a change in the revenue requirement for Western Farmers Electric Cooperative (Western Farmers).

SPP requests an effective date of June 29, 2000 for these changes.

Copies of this filing have been served on all affected state commissions, SPP customers and SPP members.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER00–2974–000]

Take notice that on June 28, 2000, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an Interconnection and Operating Agreement with The Goodyear Tire & Rubber Company (Goodyear), and a Generator Imbalance Agreement with Goodyear.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Avista Corporation

[Docket No. ER00–2975–000]

Take notice that on June 28, 2000, Avista Corporation (AVA) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 35.12 of the Commission's Regulations, 18 CFR Part 35.12, an executed Net Settlement Agreement with Engage Energy US, L.P.

Avista Corporation (AVA) requests that the Net Settlement Agreement be made effective April 1, 2000.

A copy of this filing has been served upon Engage Energy US, L.P.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. MidAmerican Energy Company

[Docket No. ER00–2976–000]

Take notice that on June 28, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Suite 2900, Des Moines, Iowa 50309, filed with the Commission a First Amendment to the Power Sales Agreement Between MidAmerican Energy Company and Waverly Light and Power (Amendment), dated February 10, 1999, entered into by MidAmerican and the Municipal Electric Utility of Waverly, Iowa, pursuant to MidAmerican's Service Agreement No. 12 with Waverly, effective February 1, 1997, and pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5.

MidAmerican requests an effective date of June 29, 2000 for the Amendment and seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on the Municipal Electric Utility of Waverly, Iowa, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER00–2977–000]

Take notice that on June 28, 2000 Florida Power & Light Company (FPL) filed a Service Agreement with City of Lakeland, Florida for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light and a Service Agreement with Allegheny Energy Supply Company, LLC for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreements be made effective on June 1, 2000.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER00–2978–000]

Take notice that on June 28, 2000, Commonwealth Edison Company (ComEd) tendered for filing an executed service agreement for Central Illinois Light Company (CILCO) under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests and effective date of May 30, 2000 for the service agreement and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served on CILCO.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. CinCap VIII, LLC and Cinergy Capital & Trading, Inc.

[Docket No. ER00–2979–000]

Take notice that on June 28, 2000, CinCap VIII, LLC (CinCap VIII) and Cinergy Capital & Trading, Inc. (CC&T), tendered for filing a Master Power Purchase and Sale Agreement dated June 1, 2000 under which CinCap VIII and CC&T may sell and purchase electric power pursuant to their respective rate schedules authorizing them to sell power at market-based rates.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER00–2980–000]

Take notice that on June 28, 2000, Commonwealth Edison Company (ComEd) tendered for filing agreements establishing Peoples Energy Services Corporation (Peoples), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of June 6, 2000 for the agreement and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Peoples.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. New Century Services, Inc.

[Docket No. ER00–2981–000]

Take notice that on June 28, 2000, New Century Services, Inc. (NCS), on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (SPS) (collectively the NCE Operating Companies), filed amended tariff sheets to the NCE Operating Companies' open-access transmission tariff (NCE Tariff). NCS states that the purpose of the filing is to amend the NCE Tariff to make clear that it does not apply to transmission service on the SPS transmission system that will be available under the Southwest Power Pool open-access transmission tariff.

NCS requests that the revised tariff sheets be made effective on June 29, 2000.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC

[Docket No. ER00–2983–000]

Take notice that on June 28, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed Second Revised Service Agreement No. 3 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services. The Service Agreement portion of Second Revised Service Agreement No. 3 will maintain the effective date of November 29, 1999, in accordance with the Commission's Order at Docket No. ER00–907–000.

Allegheny Energy requests a waiver of notice requirements to make the Netting Agreement effective as of May 2, 2000 to DTE Energy Trading, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Rockingham Power, L.L.C.

[Docket No. ER00–2984–000]

Take notice that on June 29, 2000, Rockingham Power, L.L.C., tendered for filing a long-term power sales agreement between Rockingham Power, L.L.C. and Duke Power, a Division of Duke Energy Corporation, to be in effect as of May 30, 2000.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. PPL Electric Utilities Corporation

[Docket No. ER00–2985–000]

Take notice that on June 29, 2000, PPL Electric Utilities Corporation d/b/a PPL Utilities (formerly known as PP&L, Inc.), tendered for filing notice of cancellation of the Power Sales Tariff—Market Rates Service Agreement, dated June 15, 1998, between American Electric Power Service Corporation (as agent for the AEP Companies) and PPL Utilities.

PPL Utilities requested an effective date of this cancellation of August 28, 2000.

Notice of the proposed cancellation has been served upon American Electric Power Service Corporation.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Western Systems Coordinating Council

[Docket No. ER00–2986–000]

Take notice that on June 29, 2000, the Western Systems Coordinating Council (WSCC), tendered for filing with the Commission an First Amendment to the Reliability Criteria Agreement under the WSCC's Reliability Management System. The amendment modifies the time period under the Disturbance Control Standard to fifteen minutes.

The WSCC requests that the Commission make such amendment effective July 1, 2000.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation

[Docket No. ER00–2987–000]

Take notice that on July 29, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement with The Legacy Group, LLC providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be accepted for filing and made effective on June 27, 2000.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Avista Corp.

[Docket No. ER00–2988–000]

Take notice that on June 29, 2000, Avista Corp. (AVA), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with Public Service Company of Colorado.

AVA requests the Service Agreements be given a respective effective date of June 12, 2000.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Wisconsin Public Service Corporation

[Docket No. ER00–2989–000]

Take notice that on June 29, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Firm Transmission Service Agreement with Public Service of Colorado providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be accepted for filing and made effective on June 27, 2000.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Wisconsin Public Service Corporation

[Docket No. ER00–2990–000]

Take notice that on June 29, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Firm Transmission Service Agreement with The Legacy Group, LLC providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be accepted for filing and made effective June 27, 2000.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Wisconsin Electric Power Company

[Docket No. ER00–2991–000]

Take notice that on June 29, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Conectiv Energy Supply, Inc.

Wisconsin Electric respectfully requests an effective date of June 16, 2000 to allow for economic transactions.

Copies of the filing have been served on Conectiv Energy Supply, Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Wisconsin Electric Power Company

[Docket No. ER00–2992–000]

Take notice that on June 29, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing notice that effective June 30, 2000, Service Agreement No. 20, effective August 22, 1995 under Wisconsin Electric Power Company's Coordination Sales Tariff, FERC Electric Tariff First Revised Volume 2 is to be canceled as requested by the customer Utility 2000 Energy Corp. (U2K).

Copies of the filing have been served on U2K Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. PJM Interconnection, L.L.C.

[Docket No. ER00–2993–000]

Take notice that on June 29, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing changes to the PJM Open Access Transmission Tariff (PJM Tariff) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., to permit and accommodate requests to schedule and dispatch generation to meet voltage limits more restrictive than that which PJM determines is required for the reliable operation of transmission system in the PJM control area.

Copies of this filing were served upon all members of PJM and each state electric utility regulatory commission in the PJM control area.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. PJM Interconnection, L.L.C.

[Docket No. ER00–2994–000]

Take notice that on June 29, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing changes to the PJM Open Access Transmission Tariff (PJM Tariff) to add a new Section 2.3 setting forth procedures for transmission customers to exercise the transmission reservation priority rights specified in Section 2.2 of the PJM Tariff.

Copies of this filing were served upon all members of PJM and each state electric utility regulatory commission in the PJM control area.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. PJM Interconnection, L.L.C.

[Docket No. ER00–2995–000]

Take notice that on June 29, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed service agreement for network integration transmission service under the PJM Open Access Transmission Tariff with Conectiv Energy Supply, Inc. (Conectiv).

Copies of this filing were served upon Conectiv and the state commissions within the PJM control area.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Williams Energy Marketing & Trading Company

[Docket No. ER00–2996–000]

Take notice that on June 29, 2000, Williams Energy Marketing & Trading Company (Williams EM&T), tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994), and Part 35 of the Commission's Regulations, 18 CFR 35, its Fourth Revised FERC Electric Rate Schedule No. 1.

The primary purpose of this filing is to clarify that Williams EM&T has authority to sell wholesale ancillary services to entities located in California that do not self-supply ancillary services to the California Independent System Operator Corporation (CAISO).

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Sierra Pacific Power Company and Nevada Power Company

[Docket No. ER00–2997–000]

Take notice that on June 29, 2000, Sierra Pacific Power Company (Sierra) and Nevada Power Company (Nevada Power), tendered for filing pursuant to Section 205 of the Federal Power revised tariff sheets applicable to their Joint Open Access Transmission Tariff. Certain of the revisions are intended to revise the charges for Energy Imbalances and to provide for Generation Imbalance Service.

Sierra and Nevada Power request that these changes be made effective as of July 1, 2000. Sierra and Nevada Power also have filed Generation Interconnection Procedures, which they request be made effective September 1, 2000.

Comment date: July 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17323 Filed 7–7–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of License Surrender, and Soliciting Comments, Motions To Intervene, and Protests

July 3, 2000.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Surrender of License.

b. Project No: 2954–020.

c. Date Filed: May 31, 2000.

d. Applicant: City of Santa Barbara, California.

e. Name of Project: Gibraltar Hydroelectric Project.

f. Location: At Lauro Reservoir, located at the north end of San Roque Road, Santa Barbara, California. The project utilizes federal lands managed by the U.S. Department of the Interior, Bureau of Reclamation.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: David H. Johnson, Public Works Director, City of Santa Barbara, 630 Garden Street, P.O. Box 1990, Santa Barbara, CA 93102, (805) 546–5387.

i. FERC Contact: Any questions concerning this notice should be addressed to Paul Friedman at (202) 208–1108; e-mail: paul.friedman@ferc.fed.us.

j. Deadline for filing comments, motions, or protests: August 7, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Commission, 888 First Street, NE, Washington, D.C. 20426. Please include the Project No. (2954–020) on any comments or motions filed.

k. Description of Project: The project consists of: (1) A 600-foot-long, 180-foot-high, concrete arch dam; (2) a reservoir with a surface area of 8,500-acre-feet; (3) the 19,650-foot-long Mission Tunnel; (4) a 6,200-foot-long penstock; (5) a powerhouse containing a single generating unit with an installed capacity of 750kW; and (6) appurtenant facilities. The licensee requests surrender of the license, stating that the project is no longer economically viable.

l. Locations of this 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, Washington, DC 20426, or by calling (202) 208–1371. The filing may be viewed on http://www/ferc.fed.us/ online/rims/htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing 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 that title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–17327 Filed 7–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

July 5, 2000.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: July 12, 2000, 10:00 a.m.

Place: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

Status: Open.

Matters To Be Considered: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

Contact Person for More Information: David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

745th—Meeting July 12, 2000, Regular Meeting (10:00 a.m.)

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
  Docket# ER00–2360, 000, Pacific Gas and Electric Company
  Other#s ER00–2360, 001, Pacific Gas and Electric Company
CAE–2.
  Docket# ER00–2485, 000, New England Power Pool
  Other#s ER00–1572, 001, USGEN New England, Inc.
CAE–3.
  Docket# ER00–2581, 000, California Independent System Operator Corporation
  Other#s ER00–2582, 000, California Independent System Operator Corporation
  ER00–2583, 000, California Independent System Operator Corporation
CAE–4.
  Docket# ER00–2621, 000, Entergy Louisiana, Inc.
CAE–5.
  Docket# ER00–1820, 000, Commonwealth Edison Company
  Other#s ER00–1820, 001, Commonwealth Edison Company of Indiana
CAE–6.
  Docket# EC00–27, 000, Utilicorp United, Inc.
  Other#s EC00–27, 001, Utilicorp United, Inc.
  EC00–28, 000, Utilicorp United, Inc.
  EC00–28, 001, Utilicorp United, Inc.
CAE–7.
  Docket# EC00–91, 000, Conectiv and NRG Energy, Inc.
CAE–8.
  Docket# EC00–75, 000, Nisource, Inc.
CAE–9.
  Docket# ER94–736, 001, Washington Water Power Company
  Other#s ER94–760, 001, Puget Sound Energy, Inc.
  ER94–759, 001, Puget Sound Energy, Inc.
  ER94–752, 001, Puget Sound Energy, Inc.
  ER94–750, 001, Puget Sound Energy, Inc.
  ER94–749, 001, Puget Sound Energy, Inc.
  ER94–685, 001, Pacificorp
CAE–10.
  Docket# ER00–800, 001, California Independent System Operator Corporation
  Other#s EL00–58, 000, Western Power Trading Forum v. California Independent System Operator Corporation
  ER00–900, 001, Pacific Gas and Electric Company
CAE–11.
  Omitted
CAE–12.
  Docket# EC00–57 001, Baltimore Gas and Electric Company, Calvert Cliffs, Inc., Constellation Enterprises, Inc. and Constellation Generation, Inc.
CAE–13.
  Docket# ER00–1933, 001, Entergy Services, Inc.
CAE–14.
  Docket# RM00–10, 000, Open Access Same-Time Information System Phase II
CAE–15.
  Omitted
CAE–16.
  Docket# EL00–70, 000, New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.
  Other#s EL00–70, 001, New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.
  ER00–2624, 000, New York Independent System Operator, Inc.

Consent Agenda—Markets, Tariffs and Rates—Gas

CAG–1.
  Docket# RP00–317, 000, Mississippi Canyon Gas Pipeline, LLC
CAG–2.
  Docket# RP00–330, 000, Dauphin Island Gathering Partners
CAG–3.
  Docket# RP00–348, 000, Canyon Creek Compression Company
CAG–4.
  Omitted
CAG–5.
  Docket# RP00–353, 000, Black Marlin Pipeline Company
CAG–6.
  Docket# RP00–2, 000, Overthrust Pipeline Company
CAG–7.
  Docket# IS00–233, 000, Alpine Transportation Company
CAG–8.
  Docket# RP00–310, 000, Discovery Gas Transmission LLC
  Other#s RP00–310, 001, Discovery Gas Transmission LLC
CAG–9.
  Docket# CP96–152, 026, Kansas Pipeline Company
CAG–10.
  Docket# RP00–239, 001, Pine Needle LNG Company, LLC
CAG–11.
  Omitted
CAG–12.
  Omitted
CAG–13.
  Docket# RP93–5, 037, Northwest Pipeline Corporation
  Other#s RP93–5, 038, Northwest Pipeline Corporation
  RP93–5, 039, Northwest Pipeline Corporation
  RP93–96, 015, Northwest Pipeline Corporation
  RP93–96, 016, Northwest Pipeline Corporation
  RP93–96, 017, Northwest Pipeline Corporation
CAG–14.
  Docket# RM00–6, 000, Well Category Determinations
CAG–15.
  Docket# RP00–212, 000, NUI Corporation (City Gas Company of Florida Division) v. Florida Gas Transmission Company
CAG–16.
  Docket# MG00–7, 000, Texas Gas Transmission Corporation
CAG–17.
  Docket# PR00–7, 000, Duke Energy Texas Intrastate Pipeline, LLC

Other#s PR00–7, 001, Duke Energy Texas Intrastate Pipeline, LLC

Consent Agenda—Energy Projects—Hydro

CAH–1.
Docket# P–2609, 014, Curtis/Palmer Hydroelectric Company LP and International Paper Company
CAH–2.
Docket# P–2114, 083, Public Utility District No. 2 of Grant County, Washington

Consent Agenda—Energy Projects—Certificates

CAC–1.
Docket# CP99–76, 001, Transcontinental Gas Pipe Line Corporation
CAC–2.
Docket# CP98–131, 003, Vector Pipeline L.P.
Other#s CP98–133, 004, Vector Pipeline L.P.
CP98–134, 003, Vector Pipeline L.P.
CP98–135, 003, Vector Pipeline L.P.
CP00–26, 000, Laura Lee Reesor V. Vector Pipeline L.P.
CAC–3.
Docket# CP99–522, 001, Transwestern Pipeline Company
CAC–4.
Docket# RM00–5, 000, Optional Certificate and Abandonment Procedures for Applications for new Service Under Section 7 of the Natural Gas Act
CAC–5.
Docket# RP00–220, 000, Town of Neligh, Nebraska v. Kinder Morgan Interstate Gas Transmission, L.L.C. and KN Energy, a Division of Kinder Morgan, Inc.
CAC–6.
Docket# CP97–315, 000, Independence Pipeline Company
Other#s CP97–319, 000, ANR Pipeline Company
CP97–320, 000, Independence Pipeline Company
CP97–321, 000, Independence Pipeline Company
CP98–200, 000, National Fuel Gas Supply Corporation

Energy Projects—Hydro Agenda

H–1.
Reserved

Energy Projects—Certificates Agenda

C–1.
Omitted

Markets, Tariffs and RATES—Electric Agenda

E–1.
Reserved

Markets, Tariffs and Rates—Gas Agenda

G–1.
Reserved

David P. Boergers,

Secretary.

[FR Doc. 00–17442 Filed 7–6–00; 10:54 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00666; FRL–6594–9]

Public Meeting on the Mechanisms for Limiting Quantities of Pesticides Used

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In its efforts to reduce risk from pesticide exposure, EPA on occasion has made agreements with pesticide registrants to cap the annual production of a particular pesticide active ingredient. In an August 1999 Memorandum of Agreement (MOA) between EPA and the registrants of azinphos-methyl (AZM), the total volume of AZM available for use each year was capped. In the MOA, a temporary approach for allocating the cap among the producers of AZM was agreed upon for 2000 with the understanding a clear mechanism for allocating the cap would be in place for subsequent years. Because EPA has restricted the quantities of certain pesticides in the past and may do so in the future, the Agency agreed to hold a public meeting to get input on establishing a mechanism for accomplishing this and any future chemical-specific quantity limits. The purpose of this notice is to announce a public meeting to discuss mechanisms for chemical-specific quantity limits and to solicit comment on EPA's preliminary thinking on the allocation of chemical-specific quantity limits.

DATES: Comments, identified by docket control number OPP–00666, must be received on or before August 24, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00666 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Richard Dumas, Special Review and Reregistration Division, 7508C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8015; fax number: (703) 308–8041; e-mail address: dumas.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to pesticide registrants, pesticide user groups, and environmental groups. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**-Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00666. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is

imperative that you identify docket control number OPP–00666 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00666. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

1. *Meeting announcement*. The purpose of this notice is to announce a public meeting on September 7, 2000, from 9:00 a.m. to 12:00 p.m. at the National Rural Electric Cooperative Association Conference Center, 4301 Wilson Blvd, Arlington, VA 22203; telephone number: (703) 907–5933, to get input on mechanisms for allocating chemical specific production caps. This notice also announces the opening of a public comment period to solicit comment on EPA's preliminary thoughts concerning the allocation of quantity limits. The public comment period will end on August 24, 2000.

2. *Overview*. Through a 1999 Memorandum of Agreement (MOA) between EPA and the registrants of technical grade azinphos-methyl (AZM), EPA sought to reduce the risks associated with AZM use. The extent of the required risk reduction measures was based, in part, on data concerning the percentage of each crop that was treated with AZM over the 1995–1998 growing seasons. Recognizing that increases in AZM use could raise the aggregate dietary risk to unacceptable levels, EPA and the registrants of technical grade AZM agreed that the volume of AZM available for use each year would be subject to a finite limit. EPA determined that the most expeditious and effective means of limiting AZM use would be through a cap on production (import) of technical grade AZM.

In the MOA, a temporary approach for allocating production among the producers of technical grade AZM was agreed upon for 2000 with the understanding that EPA would reexamine the allocation of AZM production under the cap for subsequent years. Because persons other than the present AZM registrants may have interests in the allocation of AZM production, and because chemical-specific quantity limits may be used for other pesticides in the future, the Agency agreed to hold a public meeting to get input on mechanisms for implementing chemical-specific quantity limits. Below are the characteristics that the Agency believes are needed for any chemical-specific quantity limit and some preliminary ideas on the issues that the Agency needed feedback.

3. *EPA's Goals*. The Agency has identified some characteristics that it believes are desirable in a chemical-specific quantity limit where there is more than one registrant producing manufacturing use products. First, the mechanism should provide reasonable assurance that the quantities of AZM used in the U.S. will not exceed EPA's targets. The mechanism should allow for economic competition between registrants that is comparable to the amount that would exist without the cap. The mechanism should neither create monopolies nor prevent new entrants into the market. The mechanism should minimize the disruption in the market. For example, EPA wants a mechanism that minimizes the incentive to flood the market with product on the first day of the year or to supply more product than the market actually needs, and minimizes the chance of shortages. Finally, any mechanism adopted must be verifiable, timely, and simple to administer.

4. *Soliciting comment*. There are a number of areas that the Agency is seeking input. In addition to the issues specified below, the Agency is interested in the public's input on any other areas, that may help the Agency develop a mechanism for implementing chemical-specific quantity limits that meets the goals above.

Input on how to apportion chemical-specific quantity limits. EPA could set a limit on the total quantity to be produced (imported), and leave all allocation issues to the workings of the free market. Alternatively, EPA could assign each registrant a quota, or designate quotas by crop. Each of these approaches have advantages and disadvantages. Allocating by registrant

would allow the registrants to plan production and distribution more precisely than they could if EPA left allocation to the workings of the free market. However, a mechanism that allocates production (imports) by registrant may reduce price competition, and may raise anti-trust statutes concerns. Another potential weakness with allocation by registrant, is that there will be less of the pesticide available in the market place, there is no assurance that those who have the greatest need for the pesticide will have access to it. Historically, those who have the greatest need for a specific pesticide are those who grow minor use crops, such as fruits, vegetables and nursery crops. To deal with the minor use concern, the pesticide could be allocated by crop or crop groups. This approach could help direct the pesticide where the economic benefits are greatest. It potentially would require significant effort by USDA and/or the user community. This approach is likely to be administratively more cumbersome and more difficult to enforce relative to allocation by registrant. Whether or not the apportioning is by registrant or crop, it can be allocated by any number of mechanisms including a free market, a predetermined allocation set by EPA, or prescription based on pest pressure or other criteria.

Input on frequency and timing of reporting. To verify that the cap is not exceeded, some reporting is necessary. The amount and frequency of reporting will depend on the allocation mechanism used. For example, if EPA does not make any allocation between registrants, a production (import) limit would require frequent reporting of production (import) volumes in order that EPA might notify all registrants when the limit has been reached. A system where each registrant has a predetermined quota would require significantly less reporting.

Input on which 12–month period should be used. A cap implemented on a calendar year basis may pose difficulties if the calendar year does not correspond to the production, distribution and use cycles of a particular pesticide. Distributors and users may have to purchase the pesticide out of season and store it until use. Manufacturers and distributors may have difficulty anticipating demand. EPA may have difficulty ascertaining whether the risk management goal of limiting the quantity used has been achieved in a particular growing season. Accordingly, EPA seeks input on what 12–month period should be used for the AZM cap. EPA also seeks input on whether one time period could be suitable for all future caps. For simplicity, a specific time frame that can be used in all future cases would be desirable, but differing crop or production cycles may warrant setting time frames on a case-by-case basis.

Input on potential impacts to the market. As mentioned in the goals above, the Agency wants to minimize the impact on the market place. In particular, EPA wants to avoid structures that would significantly reduce price competition or that would increase barriers to new competitors entering the market.

Input on what should be capped. The current AZM cap is expressed in pounds of active ingredient imported because the present sources of technical grade AZM are overseas. EPA seeks comment on alternative approaches; for example, caps could be established for imports, production of technical or of end use products, or sales of end use product. EPA also seeks comment on whether, and how, AZM isomers should be addressed in the cap. Commenters should address how such alternatives would further, or detract from, the goals of having a mechanism that is easy to administer, verifiable, and timely.

Input on other areas that would be helpful for developing an allocation mechanism that meets the goals described above. The issues above represent some preliminary ideas on what types of things need to be considered before developing an allocation system that meets the broad goals mentioned in Unit II.A. Commenters are encourage to identify other factors that they believe would be important to develop a fair and manageable allocation mechanism.

B. What is the Agency's Authority for Taking this Action?

FIFRA section 3(c)(5)(D) allows the Administrator to register a pesticide only upon finding that the pesticide when used in accordance with widespread and commonly recognized practice will not generally cause unreasonable adverse effects on the environment. In instances where a pesticide causes adverse effects that closely approach being unreasonable, and which would become unreasonable if the pesticide were more widely used, limitations to prevent the pesticide from becoming more widely used may be necessary to maintain registration. Measures which would limit the total quantity applied are therefore consistent with EPA's statutory authority. Special Review and Reregistration Division, Office of Pesticide Programs.

List of Subjects

Environmental protection, Pesticide production caps

Dated: June 30, 2000.

Lois Rossi,

Director,

[FR Doc. 00–17355 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6732–5]

Scientific Peer-Review Meeting To Review Draft Document on Ecological Soil Screening Level Guidance

AGENCY: Environmental Protection Agency.

ACTION: Notice of Peer-Review Panel Workshop.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that Versar, Inc., an EPA contractor for external scientific peer review, will organize, convene, and conduct an external peer-review panel workshop to review the external review draft document titled, *Ecological Soil Screening Level Guidance.* The document was prepared by an EPA-lead multi-stakeholder process with participants from EPA (the Office of Solid Waste and Emergency Response (OSWER), the Office of Research and Development (ORD), and the Regions), Environment Canada, the U.S. Department of Energy (DOE), the U.S. Department of Defense (DoD), states, academia, industry, and consultants. The EPA will consider the peer-review advice and comments in revising the document.

DATES: The peer-review panel workshop will be held Wednesday, July 26, 2000, from 8:30 a.m. until 5:00 p.m. and Thursday, July 27, from 8:30 a.m. until Noon. Members of the public may attend as observers, and there will be a limited time for comments from the public.

ADDRESSES: The external peer-review panel workshop will be held at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia. Versar, Inc., an EPA contractor, is organizing, convening, and conducting the peer-review workshop. To attend the workshop, please register by July 24, 2000, by calling Mr. Amanjit Paintal, Versar, Inc., 6850 Versar Center, Springfield, VA 22151 at 703–750–3000 extension 449, or send a facsimile to 703-642–6954. You can also register via email at paintama@versar.com. Space is

limited, and registrations will be accepted on a first-come, first-served basis. There will be a limited time for comments from the public during the workshop. Please let Versar, Inc., know if you wish to make comments.

The draft guidance document on ecological soil screening levels is available on the Internet at http://www.epa.gov/superfund/programs/risk/tooleco.htm. A limited number of paper copies are available from Versar. If you are requesting a paper copy, please provide your name, mailing address, and the document title, *Ecological Soil Screening Level Guidance.* Copies are available from Versar, Inc. by calling Mr. Amanjit Paintal, Versar, Inc., 6850 Versar Center, Springfield, VA 22151 at 703–750–3000 extension 449, or send a facsimile to 703–642–6954. You can also request a copy by e-mail by writing to paintama@versar.com.

FOR FURTHER INFORMATION CONTACT: For workshop information, registration, and logistics, contact Mr. Amanjit Paintal, Versar, Inc., 6850 Versar Center, Springfield, VA 22151, at 703–750–3000 extension 449 or via email at paintama@versar.com.

For technical information, contact Steve Ells, OSWER, telephone: 703–603–8822, facsimile: 703–603–9100, e-mail: ells.steve@epa.gov; or Randy Wentsel, ORD, telephone: 202-564–3214, facsimile: 202–565–0050, e-mail: wentsel.randy@epa.gov.

SUPPLEMENTARY INFORMATION: The purpose of the document is to put forward procedures to develop scientifically sound, ecologically based, soil screening levels that are protective of the terrestrial environment for up to 24 chemicals of concern. As part of the process, methodologies and models that use site-specific exposure data to modify these screening levels are presented.

Although several different entities (Oak Ridge National Laboratory, the Canadian Council of Ministers of the Environment, the Dutch National Institute of Public Health and the Environment, and the Ontario Ministry of Environment and Energy) have developed sets of soil screening levels, benchmarks, or preliminary remediation goals for many contaminants, EPA has not embraced any specific approach for use nationally at all Superfund sites. Although some EPA Regional Offices, Federal agencies, states and contractors use one or more of these approaches, many do not and instead perform literature searches for toxicity data on each of the chemicals of potential concern and develop site-specific soil concentrations to be used as screening levels for the site under investigation. This repetitious approach can be very costly and time-consuming.

In order to improve national consistency and to conserve resources, an effort was made to form a multi-stakeholder process to develop scientifically sound, ecologically-based, soil screening levels, and many have participated, e.g., EPA, DoD, DOE, states, industry, and consultants. This collaborative project is expected to result in a Superfund guidance document that includes generic ecological soil screening levels (Eco-SSLs) for up to 24 chemicals that are frequently of ecological concern at Superfund sites. These Eco-SSLs will be soil concentrations that are expected to be protective of the mammalian, avian, plant, and soil invertebrates communities that could be exposed to the chemicals of concern. These Eco-SSLs will be conservative in order to be confident that chemicals that could present an unacceptable risk are not screened out early in the risk assessment process. The process used to develop this first set of Eco-SSLs can also be used to develop additional screening levels for other chemicals.

The participants produced draft Eco-SSLs for mammals, birds, plants, and soil biota. The plant and soil biota values were developed from available plant and soil invertebrate toxicity test data. The mammal and bird benchmarks were back-calculated from a hazard quotient of 1.0 using animal toxicity data and a small number of generic food chain models. The lowest reasonable Eco-SSL for each chemical will then be used to screen chemicals found at sites. These generic (i.e., not site-specific) Eco-SSLs will be used during Step 2 of the Superfund Ecological Risk Assessment (ERA) process (Ecological Risk Assessment Guidance for Superfund; Process for Designing and Conducting Ecological Risk Assessments, 1997), when there often are only limited site-specific data available. These levels represent a set of screening ecotoxicity values that can be used routinely to identify those chemicals of potential concern (COPCs) in soils requiring further evaluation in a baseline ecological risk assessment; they are not national cleanup standards.

Dated: July 3, 2000.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 00–17350 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6732–6]

Science Advisory Board; Notification of Change in Location of a Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of a change in location for the Science Advisory Board's (SAB's) Executive Committee meeting scheduled for Wednesday and Thursday, July 12–13, 2000. This meeting was previously noticed in 65 FR 39614, June 27, 2000. The only change from that previous notice is the meeting location. Both days of the meeting will now be held at the US Environmental Protection Agency, Environmental Research Center (ERC), Highway 54 and T.W. Alexander Drive, Research Triangle Park, NC. On July 12, the meeting will be in ERC Classroom Two, and on July 13, the meeting will be in ERC Classroom One. The meeting will convene each day at 8:30 am and adjourn no later than 5:30 pm. All times noted are Eastern Daylight Time. The meeting is open to the public, however, seating is limited and available on a first come basis.

Dated: June 30, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–17336 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–954; FRL–6594–5]

Notice of Filing of Pesticide Petitions to Establish Tolerances for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–954, must be received on or before August 9, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is

imperative that you identify docket control number PF–954 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva C. Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–954. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–954 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *''opp-docket@epa.gov,''* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–954. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that the petitions contain data or information regarding the elements set forth in

section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represents the view of the petitioner. The petition summaries announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

I. Huntsman Petrochemical Corporation

PP 0E6098

EPA has received a pesticide petition PP 0E6098 from Huntsman Petrochemical Corporation, 3040 Post Oak Blvd., Houston TX 77056 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2- propenoic acid, 2-methyl-, methyl ester, for use as a surfactant in formulations when used in accordance with good agricultural practices as an inert ingredient in pesticide formulations applied to growing crops or on the raw agricultural commodity (RAC) after harvest. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Analytical method. Huntsman is petitioning that poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl-and 2-propenoic acid, 2-methyl-, methyl ester be exempt from the requirement of a tolerance based upon the definition of a low risk polymer as per 40 CFR 723.250. Therefore, an analytical method to determine residues of poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester in RACs has not been proposed.

B. Toxicological Profile

1. *Acute toxicity.* In the case of certain chemical substances that are defined as ''polymers,'' the Agency has established a set of criteria which identifies categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are typically not readily absorbed, and are relatively unreactive and stable compounds in comparison to other chemical substances. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low risk polymers.

i. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester is not a cationic polymer, nor is it capable of becoming a cationic polymer in the natural aquatic environment.

ii. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester contains as an integral part of its composition the atomic elements carbon, hydrogen, oxygen.

iii. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(iii).

iv. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester is not designed, nor is it reasonably anticipated to substantially degrade, decompose, or depolymerize.

v. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester is manufactured using monomers and/or other reactants that are already included on the TSCA Chemical Substance Inventory or covered under an applicable TSCA section 5 exemption.

vi. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,000.

vii. The number average molecular weight of poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester is 3,700. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

viii. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester contains approximately 0.03% oligomeric material below molecular weight 500 and approximately 0.22% oligomeric material below 1,000 molecular weight.

ix. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester does not contain reactive functional groups.

2. *Endocrine disruption.* There is no evidence that poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester is an endocrine disrupter, where as substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-

oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester is not absorbed through the intact GI tract and is considered incapable of eliciting a toxic response.

ii. *Drinking water*. Based upon the aqueous insolubility of poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester, there is no reason to expect human exposure to residues in drinking water.

2. *Non-dietary exposure*. Although there may be exposures to the compound through dietary, and/or non-occupational sources, the chemical characteristics of this compound are such that there is reasonable certainty of no harm from aggregate exposure.

D. Cumulative Effects

There is no reasonable expectation of any increased risk due to cumulative exposure to poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester, since polymers with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

E. Safety Determination

1. *U.S. population*. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester causes no safety concerns because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b) and, as such, is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where there would be additional risk.

2. *Infants and children*. Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester causes no additional concern to infants and children because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b) and, as such, is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where infants and children would be at additional risk.

F. International Tolerances

Huntsman is not aware of any country requiring a tolerance for poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-methoxy-, polymer with 2-propenoic acid, 2-methyl- and 2-propenoic acid, 2-methyl-, methyl ester, nor have there been any CODEX maximum residue levels established for any food crops at this time.

II. Huntsman Petrochemical Corporation

PP 0E6099

EPA has received a pesticide petition PP 0E6099 from Huntsman Petrochemical Corporation, 3040 Post Oak Blvd., Houston, TX 77056 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt for use as a surfactant in formulations when used in accordance with good agricultural practices as an inert ingredient in pesticide formulations applied to growing crops or on the RAC after harvest. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Analytical method. Huntsman is petitioning that 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt be exempt from the requirement of a tolerance based upon the definition of a low risk polymer as per 40 CFR 723.250. Therefore, an analytical method to determine residues of 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt in RACs has not been proposed.

B. Toxicological Profile

1. *Acute toxicity*. In the case of certain chemical substances that are defined as ''polymers,'' the Agency has established a set of criteria which identifies categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that typically are not readily absorbed and are relatively unreactive and stable compounds in comparison to other chemical substances. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low risk polymers.

i. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt is not a cationic polymer, nor is it capable of becoming a cationic polymer in the natural aquatic environment.

ii. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt contains, as an integral part of its composition, the atomic elements carbon, hydrogen, oxygen and monovalent sodium.

iii. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250 (d)(2)(iii).

iv. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt is not designed, nor is it reasonably anticipated to substantially degrade, decompose, or depolymerize.

v. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt is not manufactured from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

vi. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,000.

vii. The number average molecular weight of 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt is 15,000. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

viii. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt contains less than 0.1% oligomeric material below 1,000 molecular weight. The amount of oligomeric material less than 500 molecular weight is essentially nil.

ix. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt does not contain reactive functional groups.

2. *Endocrine disruption*. There is no evidence that 2,5-furandione, polymer

with (1-methylethenyl)benzene, sodium salt is an endocrine disrupter, where as substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt is not absorbed through the intact GI tract and is considered incapable of eliciting a toxic response.

ii. *Drinking water*. Based upon the aqueous insolubility of 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt, there is no reason to expect human exposure to residues in drinking water.

2. *Non-dietary exposure*. Although there may be exposures to the 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt through dietary, and/or non-occupational sources, the chemical characteristics of this compound are such that there is reasonable certainty of no harm from aggregate exposure.

D. Cumulative Effects

There is no reasonable expectation of any increased risk due to cumulative exposure to 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt since polymers with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

E. Safety Determination

1. *U.S. population*. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt causes no safety concerns because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b) and, as such, is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where there would be additional risk.

2. *Infants and children*. 2,5-Furandione, polymer with (1-methylethenyl)benzene, sodium salt causes no additional concern to infants and children because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b) and, as such, is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where infants and children would be at additional risk.

F. International Tolerances

Huntsman is not aware of any country requiring a tolerance for 2,5-furandione, polymer with (1-methylethenyl)benzene, sodium salt, nor have there been any CODEX maximum residue levels established for any food crops at this time.

[FR Doc. 00–17357 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6732–7]

Proposed CERCLA Prospective Purchaser Agreement; Green Industries Site; City of Sharonville (Cincinnati), Hamilton County, Ohio

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.*, and the authority of the Attorney General of the United States to compromise and settle claims of the United States as delegated, notice is hereby given of a proposed prospective purchaser agreement concerning the Green Industries Corporation site at 3603 East Kemper Road, in Sharonville (Cincinnati), Hamilton County, Ohio 45241, with the Port Authority for Brownfield Redevelopment in Cincinnati and Hamilton County (''the Port Authority''). The agreement requires the Port Authority to pay $500.00 to the EPA Hazardous Substance Superfund; to commence participation in the Ohio EPA Voluntary Action Program (''VAP'') and, thereafter, to use its best efforts to perform such investigation, characterization and remediation activities as are necessary to attain VAP cleanup standards and/or attain a VAP Covenant Not to Sue; and to provide to U.S. EPA access to the site and to records kept by the Port Authority, retaining any such records for at least five (5) years after the effective date of the agreement. The agreement includes U.S. EPA's covenant not to sue or to take any other civil or administrative action against the Port Authority for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with respect to existing contamination at or from the site. The United States will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. Please contact Richard R. Wagner at (312) 886–7947 to make arrangements to inspect the comments.

DATES: Comments must be submitted on or before August 9, 2000.

ADDRESSES: The proposed settlement is available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. A copy of the proposed agreement may be obtained from Richard R. Wagner, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60604, phone (312) 886–7947. Comments should reference the Green Industries Corporation prospective purchaser agreement, and should be addressed to Richard R. Wagner.

FOR FURTHER INFORMATION CONTACT: Richard R. Wagner, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60604, phone (312) 886–7947.

Dated: March 27, 2000.

William E. Muno,

Director, Superfund Division, U.S. EPA Region 5.

[FR Doc. 00–17349 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6732–3]

BMI Textron Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: The Environmental Protection Agency is proposing to enter into a settlement with the BMI Textron Corporation for response cost pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the BMI Textron Site located in Lake Park, Florida.. EPA will

consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–PSB), 61 Forsyth Street SW, Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: June 12, 2000.

James L. Miller,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–17353 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6732–4]

Chemfax Resin Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: The Environmental Protection Agency is proposing to enter into a settlement with Mr. Marshall J. Williams and Williams Paving Company, LLC for response costs pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Chemfax Resin Superfund Site located in Gulfport, Harrison County, Mississippi. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from:

Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–CPSB), 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: June 20, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–17352 Filed 7–7–00; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

TIME AND PLACE: Wednesday, July 19, 2000, at 9 a.m. to 1 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

AGENDA: This meeting will include an update on telecommunications and technology and a discussion on the Africa Growth and Opportunities Act in Sub-Saharan Africa.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to July 14, 2000, Teri Stumpf, Room 1215, Vermont Avenue, NW, Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1215, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3502.

John M. Niehuss,

General Counsel.

[FR Doc. 00–17382 Filed 7–7–00; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATONS COMMISSION

[CC Docket No. 00–65; FCC 00–238]

Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Service in the State of Texas

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission grants the section 271 application of Southwestern Bell (SWBT) for authority to enter the interLATA toll market in the State of Texas. The Commission grants SWBT's application based on our conclusion that SWBT has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

DATES: Effective date of approval of section 271 application is July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Audrey Wright or William Dever, Attorneys, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418–1580, or via the Internet at *awright@fcc.gov* or *wdever@fcc.gov*, respectively. The full text of the Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, CY–A257, 445 12th Street, Washington, DC 20554. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This document is a brief description of the Commission's Memorandum Opinion and Order adopted June 30, 2000, and released June 30, 2000. The full text also may be obtained through the World Wide Web, at *http://www.fcc.gov/ccb/Orders/index6.html,* or may be purchased from the Commission's copy contractor, International Transcription Service Inc. (ITS), CY B–400, 445 12th Street, SW, Washington, DC.

Synopsis of the Memorandum Opinion and Order

1. *History of the Application.* On January 10, 2000, SWBT filed an application with the Federal Communications Commission to provide in-region, interLATA service in the State of Texas. On April 5, 2000, SWBT filed an extensive supplement to its January 2000 application. On April 6,

2000, the Commission announced that, at SWBT's request, it would consider the January 2000 application as withdrawn, and would treat the supplemental filing as a new application incorporating the record from the initial proceeding.

2. *The Texas Commission's Evaluation.* The Texas Commission advised the Commission that, following extensive review, testing, and process improvements, SWBT met the checklist requirements of section 271(c) and had taken the statutorily required steps to open its local markets to competition. Specifically, the Texas Commission stated that SWBT met its obligation under section 271(c)(1)(A) by entering into interconnection agreements with at least 17 competing carriers that are serving residential and business customers either exclusively or predominantly over their own facilities. The Texas Commission found that SWBT had fully complied with section 271, and voted without qualification to support the application.

3. *The Department of Justice's Evaluation.* The Department of Justice submitted evaluations of SWBT's application on May 12 and June 13, 2000. In its May 12 evaluation, the Department of Justice concluded that SWBT's performance with respect to interconnection trunking had sufficiently improved to alleviate its concerns with respect to that issue. In its June 13, 2000 evaluation, the Department of Justice recommended approval of SWBT's application to provide long distance service in Texas. Specifically, the Department of Justice concluded that SWBT had significantly improved the process by which it measures and reports its performance in providing unbundled loops for DSL services, and had demonstrated improvement in its ability to provision DSL-capable loops in a nondiscriminatory manner. The Department of Justice further found that SWBT had demonstrated improvement in cutting over a loop to a competing carrier, specifically through the coordinated hot cut (CHC) process, and to a lesser degree, through the frame due time (FDT) processes. Finally, the Department of Justice stated that commercial data with respect to competing carriers' ability to compete via the UNE-platform are encouraging, and noted that order volumes in this area had increased steadily over the last few months.

4. *Compliance with Section 271(c)(1)(A).* We conclude that SWBT demonstrates that it satisfies the requirements of section 217(c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in Texas. Specifically, we find that AT&T, Birch, CoServ, ETS, Optel, Sage and KMC all provide telephone exchange service either exclusively or predominantly over their own facilities to residential subscribers and to business subscribers. The Texas Commission also concludes that SWBT has met the requirements of section 271(c)(1)(A). None of the commenting parties, including the competitors cited by SBC in support of its showing, challenges SWBT's assertion in this regard.

5. *Checklist Item 1—Interconnection.* We conclude that SWBT satisfies the requirements of checklist item 1. Pursuant to this checklist item, SWBT must allow other carriers to interconnect their networks to its network for the mutual exchange of traffic, using any available method of interconnection at any available point in SWBT's network. We find that SWBT demonstrates that it provides interconnection at all technically feasible points on its network. We likewise find that SWBT adequately demonstrates that it provides collocation in Texas in accordance with the Commission's rules. Furthermore, interconnection between networks must be equal in quality whether the interconnection is between SWBT and an affiliate, or between SWBT and another carrier. SWBT demonstrates that it provides interconnection that meets this standard.

6. SWBT also offers interconnection in Texas to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item 1. SWBT offers interconnection at the total element, long-run incremental cost (TELRIC)-based rates that are just, reasonable, and nondiscriminatory, pursuant to our rules. SWBT complies with our rules because it pro-rates its site preparation charges and allocates them according to our rules.

7. SWBT meets the standards for interim collocation rates set forth in our order approving Bell Atlantic's section 271 application. *See Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act,* 64 Fed. Reg. 73555 (1999). The mere presence of interim rates will not generally threaten a section 271 application so long as an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set. Here, the state has made reasonable efforts to set interim collocation rates in accordance with the Act and the FCC's rules. Moreover, the Texas Commission based the majority of the interim rates, at least with regard to physical collocation, on a TELRIC model. The Texas Commission has set up a schedule to set permanent rates, and has indicated to the parties that the interim rates are subject to a refund or true-up.

8. *Checklist Item 2—Access to Unbundled Network Elements.* We conclude that SWBT satisfies the requirements of checklist item 2. For the purposes of the checklist, SWBT's obligation to provide ''access to unbundled network elements,'' or the individual components of the telephone network, is comprised of three aspects. First, to fulfill its nondiscrimination checklist obligation, SWBT must provide access to its operations support systems (OSS)—the term used to describe the systems, databases and personnel necessary support the network elements or services. Nondiscriminatory access ensures that new entrants have the ability to order service for their customers and communicate effectively with SWBT regarding basic activities such as placing orders, providing maintenance and repair service for customers. For each of the primary OSS functions, including pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management and technical assistance, SWBT must provide access that enables competing carriers to perform the function in substantially the same time and manner as SWBT or, if there is not an appropriate retail analogue in SWBT's systems, in a manner that permits an efficient competitor a meaningful opportunity to compete.

9. As an initial matter, SWBT demonstrates that it provides documentation and technical assistance necessary for new entrants to connect with its OSS, and a change management process that provides information necessary for competing carriers to modify their systems and procedures when SWBT changes its OSS. With respect to pre-ordering, or the activities that a competing carrier undertakes to gather and verify the information necessary to place an order, SWBT demonstrates (primarily through evidence of actual commercial usage) that it has deployed operationally ready interfaces and systems that offer nondiscriminatory access to pre-ordering OSS functions. Specifically, SWBT's pre-ordering interfaces and systems enable competing carriers to

retrieve customer service records, validate addresses, select and reserve telephone numbers, assess the services and features available to customers, retrieve due date information, determine whether a loop is capable of supporting advanced services (such as DSL), and view a customer's directory listing. Also, just as SWBT's own pre-ordering systems are ''integrated'' with its ordering systems, competing carriers may also integrate the pre-ordering and ordering interfaces, and pass information electronically from one to the other.

10. In terms of the interfaces and systems that enable competing carriers to place an order for service, SWBT demonstrates through performance data and third-party testing that it its systems return timely order confirmation and rejection notices, provide jeopardy and order completion notification, flow through a high percentage of orders without manual handling, and are capable of handling reasonably foreseeable demand volumes. In terms of provisioning, performance data demonstrates that SWBT provisions orders for competing carriers' customers in substantially the same time and manner that it provisions orders for its own retail customers.

11. In addition, with respect to maintenance and repair, SWBT demonstrates through commercial usage that its interfaces and systems enable competing carriers to create, modify, and cancel trouble tickets, and to request that SWBT test a customer's circuit, in substantially the same time and manner as SWBT's retail operations. Similarly, SWBT resolves problems associated with customers of competing carriers in substantially the same time and manner and at the same level of quality that it performs repair work for its own customers. Finally, with respect to billing, SWBT demonstrates that it provides complete and accurate reports on the service usage of competing carriers' customers in the same manner that SWBT provides such information to itself.

12. Pursuant to this checklist item, SWBT must also provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements. Based on evidence of actual commercial usage, and upon SWBT's legal obligations under interconnection agreements offered in Texas, SWBT demonstrates that it provides to competitors combinations of already-combined network elements as well as nondiscriminatory access to unbundled network elements in a manner that allows competing carriers to combine those elements themselves.

13. We also find that SWBT satisfies the pricing requirements of checklist item 2. In fulfilling its obligations under this checklist item, SWBT demonstrates that it provides nondiscriminatory access to unbundled network elements (UNEs) at any technically feasible point at rates, terms and conditions that are just, reasonable, and nondiscriminatory. This checklist item ensures that new entrants are not placed at a competitive disadvantage due to discriminatory prices for network elements.

14. We do not find that the SWBT's assessment of nonrecurring charges on UNE orders causes it to fail this checklist item. First, we find that the a central office access charge (COAC) is not subject to the Commission's forward-looking methodology because the Supreme Court held only that incumbent local exchange carriers (LECs) cannot separate already combined elements before providing them, not that they must combine separate UNEs. *AT&T* v. *Iowa Utilities Board,* 525 U.S. 366 (1999). Second, we have not examined the prices associated with UNE combinations that SWBT is not required to provide. Third, the Texas Commission is presently considering whether SWBT may impose the nonrecurring charges on competitive LEC orders for existing UNE combinations and whether these charges are adequately supported by cost documentation. SWBT is not presently collecting nonrecurring charges on pre-combined residential platform containing a two-wire analog loop, and thus is effectively imposing an interim charge of zero while the Texas Commission examines these charges. The Texas Commission has established a schedule to set permanent rates for all nonrecurring charges, and has indicated to the parties that the interim rates are subject to a true-up. We find that SWBT's interim solution is reasonable and meets the test set forth in prior section 271 orders.

15. We reach the same conclusion regarding SWBT's interim rates for charges relating to the installation and conditioning of xDSL-capable loops. The Texas Commission is now conducting a proceeding to set permanent xDSL rates based on cost studies that SWBT submitted at the direction of the Texas Commission arbitrator, and this interim solution is reasonable under the circumstances. We also find that SWBT's promotional discounts on unbundled loop and platform orders for telecommunications carriers serving residential customers arise out of SBC's merger with Ameritech and do not cause it to fail this checklist item. We also found that these promotional offerings are offered to all telecommunications carriers on a nondiscriminatory basis.

16. *Checklist Item 3—Poles, Ducts, Conduits and Rights of Way.* Based on the evidence in the record, we conclude that SWBT provides nondiscriminatory access to the poles, ducts, conduits, and rights-of-way at just and reasonable rates in compliance with our rules and satisfies the requirements of checklist item 3. The Texas Commission concludes that SWBT provides nondiscriminatory access to poles, ducts, conduits, and rights-of-way at just and reasonable rates that comply with the Act and Commission rules. No commenter raised allegations challenging SWBT's compliance with this checklist item.

17. *Checklist Item 4—Unbundled Local Loops.* SWBT satisfies the requirements of checklist item 4. Local loops are the wires that connect the telephone company end office to the customer's home or business. To satisfy the nondiscrimination requirement under checklist item 4, SWBT must demonstrate that it can efficiently furnish unbundled local loops to other carriers within a reasonable time frame, with a minimum level of service disruption, and of a quality similar to that which it provides for its own retail customers. Nondiscriminatory access to unbundled local loops ensures that new entrants can provide quality telephone service promptly to new customers without constructing new loops to each customer's home or business.

18. SWBT provides evidence and performance data establishing that it can efficiently furnish unbundled loops, for the provision of both traditional voice services and various advanced services, to other carriers in a nondiscriminatory manner. More specifically, SWBT establishes that it provides coordinated cutovers of voice grade loops, *i.e.,* hot cuts, to competing carriers in a manner that permits efficient competitors to have a meaningful opportunity to compete. Through its CHC process, SWBT provisions 93 percent of hot cut lines within a one-hour interval, with less than five percent of hot cut lines resulting in a service disruption, and with less than two percent of hot cut lines the subject of installation trouble reports. In addition, SWBT establishes that it provides competing carriers with voice grade unbundled loops through new stand-alone loops in substantially the same time and manner as SWBT does for its own retail services. For both hot cut loops and new stand-alone loops, SWBT demonstrates that it

provides maintenance and repair functions for competing carriers in substantially the same time and manner as it provides for SWBT retail customers.

19. SWBT also demonstrates that it provides DSL-capable loops to competing carriers in a nondiscriminatory manner. Specifically, SWBT demonstrates that for both DSL and BRI loops used for advanced services, SWBT provides timely advanced services order processing and installation comparable to that which it provides SWBT retail advanced services customers. For both DSL and BRI loops, SWBT also demonstrates that it provides maintenance and repair functions for competing carriers in substantially the same time and manner that it provides such services for SWBT retail customers. In addition, SWBT demonstrates that it provides high capacity loops (*e.g.,* DS1 loops) to competing carriers in a nondiscriminatory manner.

20. *Checklist Item 5—Unbundled Local Transport.* Based on the evidence in the record, the Commission concludes that SWBT provides both shared and dedicated transport in compliance with the requirements of this checklist item. The Texas Commission also finds that SWBT is in compliance with this checklist item.

21. *Checklist Item 6—Unbundled Local Switching.* SWBT satisfies the requirements of checklist item 6. A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to another central office or to a long-distance carrier. Switches can also provide end users with ''vertical features'' such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's operator services. We find that SWBT satisfies the requirements of checklist item 6, because SWBT demonstrates that it provides competing carriers all of the features, functions, and capabilities of the switch.

22. *Checklist Item 7—911/E911/ Directory Assistance/Operator Services.* Based on the evidence submitted in the record, the Commission concludes that SWBT demonstrates that it is providing nondiscriminatory access to 911/E911 services, and thus satisfies the requirements of checklist item 7. We note that no commenter disputes SWBT's compliance with this portion of checklist item 7, and the Texas Commission concludes that SWBT is providing nondiscriminatory access to 911/E911. We further conclude, as the Texas Commission concluded, that SWBT provides directory assistance services and operator services in accordance with the requirements of this checklist item. We are not persuaded by commenters' allegations that SWBT violates the checklist by charging competitive LECs non-cost-based rates for access to directory assistance listings of customers that reside within its region, but outside of Texas. For purposes of this application, we consider only whether SWBT meets the requirements of section 271 in the State of Texas, not whether SWBT's out-of-state directory assistance meets this checklist item.

23. *Checklist Item 8—White Pages Directory Listings.* SWBT satisfies the requirements of checklist item 8. White pages are the directory listings of telephone numbers of residences and businesses in a particular area. This checklist item ensures that white pages listings for customers of different carriers are comparable, in terms of accuracy and reliability, notwithstanding the identity of the customer's telephone service provider. SWBT demonstrates that its provision of white pages listings to customers of competitive LECs is nondiscriminatory in terms of their appearance and integration, and that it provides white pages listings for competing carriers' customers with the same accuracy and reliability that it provides to its own customers.

24. *Checklist Item 9—Numbering Administration.* SWBT satisfies the requirements of checklist item 9. Telephone numbers are currently assigned to telecommunications carriers based on the first three digits of the local number, known as ''NXX'' codes. To fulfill the nondiscrimination obligation in checklist item 9, SWBT must comply with the numbering administration guidelines, plan, or rules. This checklist item ensures that other carriers have the same access to new telephone numbers as SWBT. SWBT demonstrates that it has adhered to industry guidelines and the Commission's requirements.

25. *Checklist Item 10—Databases and Associated Signaling.* SWBT satisfies the requirements of checklist item 10. Databases and associated signaling refer to the call-related databases and signaling systems that are used for billing and collection or the transmission, routing, or other provision of a telecommunications service. To fulfill the nondiscrimination obligation in checklist item 10, SWBT must demonstrate that it provides new entrants with the same access to these call-related databases and associated signaling that it provides itself. This checklist item ensures that other carriers have the same ability to transmit, route, complete, and bill for telephone calls as SWBT. SWBT demonstrates that it provides other carriers nondiscriminatory access to its: (i) Signaling networks, including signaling links and signaling transfer points; (ii) certain call-related databases necessary for call routing and completion or, in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (iii) Service Management Systems; and to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment.

26. *Checklist Item 11—Number Portability.* SWBT satisfies the requirements of checklist item 11. Number portability enables consumers to take their phone number with them when they change local telephone companies. SWBT demonstrates that it provides number portability to consumers without impairment of quality, reliability, or convenience.

27. *Checklist Item 12—Dialing Parity.* Based on the evidence in the record, we find that SWBT demonstrates that it provides local dialing parity in accordance with the requirements of section 251(b)(3) and thus satisfies the requirements of this checklist item. Furthermore, the Texas Commission concludes that SWBT meets the requirements of this checklist obligation.

28. *Checklist Item 13—Reciprocal Compensation.* SWBT satisfies the requirements of checklist item 13. Pursuant to this checklist item, SWBT must compensate other carriers for the cost of transporting and terminating a local call from SWBT. Alternatively, SWBT and the other carrier may enter into an arrangement whereby neither of the two carriers charge the other for terminating local traffic that originates on the other carrier's network. This checklist item is important to ensuring that all carriers that originate calls bear the cost of terminating such calls. SWBT demonstrates that it has reciprocal compensation arrangements in accordance with section 252(d)(2), and that it is making all required payments in a timely manner.

29. We believe that SWBT has made a concerted effort to resolve a traffic reporting dispute it has had with competing carriers, has continued to exchange traffic records with carriers during the course of this dispute, and has implemented a reasonable interim traffic reporting mechanism while industry groups work toward a permanent industry-wide solution. We

also find that SWBT's Extended Area Service (EAS) additive charge meets our reciprocal compensation requirements because EAS additives are reciprocal in nature and entirely optional. We also decline to set reciprocal compensation rates for Internet-bound traffic from an end user.

30. *Checklist Item 14—Resale.* SWBT demonstrates that it makes telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3), and thus satisfies the requirements of checklist item 14. This checklist item requires SWBT to offer other carriers all of its retail services at wholesale rates without unreasonable or discriminatory conditions or limitations so that other carriers may resell those services to an end user. This checklist item ensures a mode of entry into the local market for carriers that have not deployed their own facilities. SWBT also makes its retail telecommunications services available for resale without unreasonable or discriminatory conditions or limitations. We also find that SWBT satisfies the provisioning requirements of checklist item 14. SWBT provisions competitive LECs' orders for resale in substantially the same time and manner as for its retail customers.

31. *Section 272 Compliance.* SWBT demonstrates that it will comply with the requirements of section 272. Pursuant to section 271(d)(3), SWBT must demonstrate that it will comply with the structural, transitional, and nondiscriminatory requirements of section 272, as well as certain requirements governing its marketing arrangements. SWBT shows that it will provide interLATA telecommunications through structurally separate affiliates, and that it will operate in a nondiscriminatory manner with respect to these affiliates and unaffiliated third parties. In addition, SWBT demonstrates that it will comply with public disclosure requirements of section 272, which requires SWBT to post on the Internet certain information about transactions with its affiliates. Finally, SWBT demonstrates compliance with the joint marketing requirements of section 272.

32. *Public Interest Standard.* We conclude that approval of this application is consistent with the public interest, convenience, and necessity. While no single factor is dispositive in our public interest analysis, our overriding goal is to ensure that nothing undermines our conclusion, based on our analysis of checklist compliance, that markets are open to competition. We note that a strong public interest showing cannot overcome failure to demonstrate compliance with one or more checklist items.

33. Among other factors, we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of this Application. We find that, consistent with our extensive review of the competitive checklist, barriers to competitive entry in the local market have been removed and the local exchange market today is open to competition. We also find that the record confirms our view that a Bell Operating Company's (BOC's) entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.

34. Another factor that could be relevant to our analysis is whether we lack sufficient assurance that markets will remain open after grant of the application. We find that the performance monitoring and enforcement mechanisms developed in Texas, in combination with other factors, provide meaningful assurance that SWBT will continue to satisfy the requirements of section 271 after entering the long distance market. Where, as here, a BOC relies on performance monitoring and enforcement mechanisms to provide such assurance, we review the mechanisms involved to ensure that they are likely to perform as promised. We conclude that these mechanisms have a reasonable design and are likely to provide incentives sufficient to foster post-entry checklist compliance.

35. *Section 271(d)(6) Enforcement Authority.* Congress sought to create incentives for BOCs to cooperate with competitors by withholding long distance authorization until they satisfy various conditions related to local competition. We note that these incentives may diminish with respect to a given state once a BOC receives authorization to provide interLATA service in that state. The statute nonetheless mandates that a BOC comply fully with section 271's requirements both before and after it receives approval from the Commission and competes in the interLATA market. Working in concert with state commissions, we intend to monitor closely post-entry compliance and to enforce vigorously the provisions of section 271 using the various enforcement tools Congress provided us in the Communications Act. Swift and effective post-approval enforcement of section 271's requirements is essential to Congress' goal of achieving last competition in local markets.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17287 Filed 7–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 1:30 p.m. on Monday, July 10, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's supervisory, corporate, and receivership activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW, Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: July 6, 2000.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 00–17441 Filed 7–6–00; 10:22 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

[Notice 2000–14]

Status of Civil Enforcement Actions Involving Coordinated Party Expenditures

AGENCY: Federal Election Commission.

ACTION: Notice.

SUMMARY: The Commission has adopted a policy statement that provides guidance to candidates and political party committees on the status of certain civil enforcement actions under the Federal Election Campaign Act pending Supreme Court resolution of the issues presented in the Tenth Circuit's decision in *FEC* v. *Colorado Republican Federal Campaign Committee.*

DATES: June 20, 2000.

FOR FURTHER INFORMATION CONTACT: Louise Wides, Assistant Staff Director,

999 E Street, NW., Washington, DC 20463, (202) 694–1100 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: In a split decision, the United States Court of Appeals for the Tenth Circuit recently held that 2 U.S.C. 441a(d)(3), which limits the amount of a political party's coordinated expenditures in congressional elections, violates the First Amendment. *FEC* v. *Colorado Republican Federal Campaign Committee,* __F.3d __, 2000 WL 554688 (10th Cir. May 5, 2000). The Solicitor General has decided to seek review of that decision by the United States Supreme Court. Until the Supreme Court resolves the case, the Federal Election Commission will not file any action in the courts in the Tenth Circuit to enforce section 441a(d)(3). The Commission will, however, generally continue the administrative processing of matters concerning section 441a(d)(3).

Only the Tenth Circuit has found section 441a(d)(3) unconstitutional, and its decision is not controlling outside that court's geographic jurisdiction. Furthermore, if the United States Supreme Court overrules the Tenth Circuit, the Court's decision upholding section 441a(d)(3) will apply retroactively to any activities in the interim that violate section 441a(d)(3), even in the Tenth Circuit. *See James B. Beam Distilling Co.* v. *Georgia,* 501 U.S. 529 (1991); *Harper* v. *Virginia Dep't of Taxation,* 509 U.S. 86 (1993). Therefore, anyone who chooses to act in contravention of section 441a(d)(3)—within or without the Tenth Circuit—before the Supreme Court rules in *Colorado* could be subject to liability for violating the statute if the *Colorado* decision is reversed.

Dated: July 5, 2000.

Darryl R. Wold,

Chairman, Federal Election Commission.

[FR Doc. 00–17328 Filed 7–7–00; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Residential Basement Floodproofing Certification.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0235.

Form(s): FEMA Form 81–78.

Abstract: The certificate provides licensed design professionals a standard means of certifying the construction of floodproofed basements below the Base Flood Elevation. This certificate is only used in communities participating in the National Flood Insurance Program, who have been granted a ''basement'' exception. The homeowner must pay for the cost of the certification. Homeowners must have a registered professional engineer or architect to complete FEMA Form 81–78 for development or inspection of the structural design basement, and certify that the basement design and methods of construction are in accordance with floodplain management ordinances. Homeowners also provide FEMA Form 81–78 to their insurance agent to receive discounted flood insurance under the National Flood Insurance Program (NFIP).

Affected Public: Individuals or Households.

Number of Respondents: 50.

Estimated Time per Respondent: 3.25 hours.

Estimated Total Annual Burden Hours: 163 hours.

Frequency of Response: On occasions.

Cost to Respondents: $16.250.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625, FAX number (202) 646–3524, or e-mail address: muriel.anderson@fema.gov.

Dated: June 28, 2000.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–17363 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Request for Loan Information Verification.

Type of Information Collection: Reinstatement, without change of a previously approved collection for which approval has expired.

OMB Number: 3067–0125.

Abstract: Temporary Housing Assistance (Disaster Housing Assistance) uses mobile homes, travel trailers, or other forms of readily fabricated housing. FEMA Form 90–68 is used to obtain information required to determine a fair and equitable sales price of a mobile home to a disaster victim. The ability to borrow money commercially is an important factor in determining the final sales price.

Affected Public: Individuals or households; Business or other for profit.

Number of Respondents: 520.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 86 hours.

Frequency of Response: On occasion.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operation Support Directorate, Federal Emergency Management Agency, 500 C Street, SW,

Room 316, Washington, DC 20472, telephone number (202) 646–2625, FAX number (202) 646–3524, or e-mail address: muriel.anderson@fema.gov.

Dated: June 28, 2000.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–17364 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–01–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1333–DR]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–1333–DR), dated June 27, 2000, and related determinations.

EFFECTIVE DATE: June 27, 2000

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 27, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from severe storms and flooding on May 17, 2000, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.* (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Theodore Monette of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster:

Dodge, Faribault, Fillmore, Freeborn, Houston, Mower, and Winona Counties for Public Assistance.

All counties within the State of Minnesota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–17359 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1333–DR]

Minnesota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1333–DR), dated June 27, 2000, and related determinations.

EFFECTIVE DATE: June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota is hereby amended to include Individual Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 27, 2000:

The counties of Becker, Clay, Norman and Mahnomen and the White Earth Indian Reservation for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Laurence W. Zensinger,

Division Director, Human Services Division, Response and Recovery Directorate.

[FR Doc. 00–17362 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1334–DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1334–DR), dated June 27, 2000, and related determinations.

EFFECTIVE DATE: June 27, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 27, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from severe storms, flooding, and ground saturation beginning on June 12, 2000, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (Stafford Act). I, therefore, declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Steven R. Emory of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster:

Benson, Bottineau, Cass, Eddy, Foster, Grand Forks, Griggs, Kidder, McHenry, McLean, Nelson, Pierce, Ramsey, Ransom, Sheridan, Traill, Walsh, Wells, and the Indian Reservations of the Spirit Lake Tribal Reservation and the Turtle Mountain Band of Chippewa for Individual Assistance.

Bottineau, Cass, Eddy, Foster, Grand Forks, Griggs, Kidder, McHenry, McLean, Nelson, Pierce, Ransom, Sheridan, Traill, Walsh, Wells, and the Indian Reservations of the Spirit Lake Tribal Reservation and the Turtle Mountain Band of Chippewa for Public Assistance.

All counties within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–17360 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1332–DR]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1332–DR), dated June 23, 2000, and related determinations.

EFFECTIVE DATE: June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 23, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms, flooding and tornadoes on May 26, 2000, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James Roche of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

The counties of Adams, Crawford, Dane, Grant, Green, Iowa, Juneau, Lafayette, Monroe, Richland, Sauk, and Vernon for Public Assistance.

All counties within the State of Wisconsin are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–17358 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1332–DR]

Wisconsin; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA–1332–DR), dated June 23, 2000, and related determinations.

EFFECTIVE DATE: June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 23, 2000:

The counties of Columbia, Kenosha, Jackson and Walworth for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public

Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Human Services Division, Response and Recovery Directorate.

[FR Doc. 00–17361 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Emergency Management Performance Grants

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of change to cost share policy.

SUMMARY: We (FEMA) are standardizing the cost share for the Emergency Management Performance Grant in order to bring about a fair and equitable distribution of grant funds and cost-share requirements among the States.

DATES: The cost share change is effective October 1, 2000 for FY 2001 grants.

FOR FURTHER INFORMATION CONTACT: Jonna M. Long, Federal Emergency Management Agency, 500 C Street SW., room 717, Washington, DC 20472, telephone (202) 646–7057; facsimile (202) 646–4157; or email jonna.long@fema.gov.

SUPPLEMENTARY INFORMATION:

Background

In FY 2000, we consolidated funding for certain non-disaster programs into the Emergency Management Performance Grant (EMPG). Programs consolidated include State and Local Assistance (SLA); Superfund Amendments and Reauthorization Act (SARA) Title III; Mitigation Assistance Program (MAP); Disaster Preparedness Improvement Grants (DPIG); Pre-disaster Mitigation (Project Impact) to States; and Terrorism Consequence Management Preparedness Assistance (TCMPA).

We offered the grants in FY 2000 at composite cost shares based on the cost share policies associated with the programs consolidated into the EMPG. The composite cost shares for the non-terrorism portion of the EMPG ranged from approximately 51 percent Federal/49 percent State to approximately 54 percent Federal/46 percent State. The TCMPA portion was 100 percent federally-funded.

The composite cost shares were dependent upon which of the six programs a State participated in before consolidation, and for some programs how many years a State participated. The result of this varied participation by States is that the consolidation process has the potential to lock-in an uneven distribution of cost-share requirements.

Phase-In Procedure

We used the composite cost shares during the transition from the multiple programs to the unified EMPG. To complete the transition, and in order to bring about a fair and reasonable distribution of the funds for emergency management, we are phasing in implementation of a Federal cost share of 50 percent that will apply equally to all States for the non-TCMPA portion of the EMPG. This will be more equitable and easier to manage than previously, both at the Federal and State levels. States will have a simpler and more predictable means of planning for their share of the costs of emergency management than now, which will help their long-term budgeting process. The complete phase-in of the standard cost share will take approximately four years, with some States arriving at the 50 percent level each year.

The TCMPA portion will continue to be 100 percent federally-funded.

FY 2001 Procedure

For FY 2001 grants, we will pay a cost share one percentage point less than the composite share that we paid in 2000. For example, if a particular State's EMPG was shared in FY 2000 at 52 percent Federal/48 percent State, in FY 2001 the grant will be shared at 51 percent Federal/49 percent State. Such phasing in of the standard cost share will ease the financial burden to the State (by avoiding too large an adjustment in any one year) and will enable it to budget better for outyear cost shares.

Authority: P.L. 106–74, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000, 113 Stat. 1086.

Dated: June 15, 2000.

Patricia A. English,

Acting Chief Financial Officer.

[FR Doc. 00–17365 Filed 7–7–00; 8:45 am]

BILLING CODE 6718–01–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 August 3, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President), 33 Liberty Street, New York, New York 10045–0001:

1. M & T Bank Corporation, Buffalo, New York and Olympia Financial Corp., Buffalo, New York; to acquire 100 percent of the voting shares of, and thereby merge with Kaystone Financial, Inc., Harrisburg, Pennsylvania, and thereby indirectly acquire Keystone Financial Bank, N.A., Harrisburg, Pennsylvania. In addition M&T Bank Corporation has applied to acquire an option to purchase up to 19.9 percent of the shares of Keystone. This option will expire upon consummation of the merger.

In connection with this application, Applicants also have applied to acquire Keystone CDC, Inc., and thereby engage in community development activities, pursuant to § 225.28(b)(12) of Regulation Y; Keystone Financial Life Insurance Company, and thereby engage in credit life and disability life reinsurance activities related to home equity loan products, pursuant to § 225.28(b)(11) of Regulation Y; Keystone Financial Mid-Atlantic Funding Corporation, and thereby engage in issuing medium-term debt instruments, pursuant to § 225.28(b)(1) of Regulation Y; Martindale Andres &

Company, LLC, and thereby engage in investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y; and MMC&P Retirement Benefit Services, Inc., and thereby provide employee benefit third party administrator and actuarial consulting services, pursuant to § 225.28(b)(9)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 3, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–17275 Filed 7–7–00; 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 August 4, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. The Industrial Bank of Japan, Tokyo, Japan; to acquire 11.8 percent of the voting shares of The Dai-Ichi Kangyo Fuji Trust & Banking Company, Ltd, Tokyo, Japan, and thereby indirectly acquire voting shares of DKF Trust Company (USA), New York, New York.

Board of Governors of the Federal Reserve System, July 5, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17371 Filed 7–7–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 4 p.m., Thursday, July 13, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17487 Filed 7–6–00; 2:06 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Publication of Recommendations Relating to HIPAA Health Data Standards

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Health Insurance Portability and Accountability Act of 1996, (Section 1172 (f), Subtitle F of Pub. L. 104–191), requires the Secretary of Health and Human Services to publish in the **Federal Register** any recommendation of the National Committee on Vital and Health Statistics (NCVHS) regarding the adoption of a data standard under that law. Accordingly, the full text of the NCVHS comments on the Notice of Proposed Rulemaking issued by HHS entitled ''Standards for the Privacy of Individually Identifiable Health Information'' is reproduced below. The text of the comments has also been available on the NCVHS website and the HHS Administrative Simplification website: http://ncvhs.hhs.gov/.

SUPPLEMENTARY INFORMATION: Under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Secretary of Health and Human Services is required to adopt standards for specified administrative health care transactions to enable information to be exchanged electronically, as well as security standards. The law requires that, within 24 months of adoption, all health plans, health care clearinghouses and health care providers who choose to conduct these transactions electronically must comply with these standards. In addition, the law outlined a process leading to the development of standards to protect the privacy of individually identifiable health information.

In preparing these reports and recommendations, the Secretary is required to consult with the NCVHS, the statutory public advisory body to HHS on health data, privacy and health information policy. On February 7, 2000 the Committee submitted a set of public comments on the Notice of Proposed Rulemaking issued by HHS entitled ''Standards for the Privacy of Individually Identifiable Health Information.''

In accordance with the law, the full text of the NCVHS comments is published below.

February 7, 2000, U. S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, Attention: Privacy-P, Room G–322A, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, D. C. 20201.

Dear Sirs:

On behalf of the National Committee on Vital and Health Statistics (NCVHS), I am pleased to forward to you our recommendations on the notice of proposed rule-making for standards for

privacy of individually identifiable health information. The NCVHS congratulates the Department for the solid work done in drafting this notice of proposed rule-making. The NCVHS is also pleased that many of its recommendations on health information privacy in its June 1997 report have been incorporated into the proposed rule.

While the scope of the proposed rule addresses many health information privacy issues, it should be noted that there is still a need for anti-discrimination legislation. The NCVHS previously urged the Secretary to propose legislation expanding the anti-discrimination provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to cover all aspects of discrimination based on health status and condition.

While the proposed rule meets the requirements of HIPAA, the NCVHS strongly believes that there is a need for comprehensive federal legislation to address the privacy of individually identifiable health information. The proposed rule is limited in scope and does not cover all records or all entities with access to individually identifiable health information.

Applicability

The NCVHS agrees that the scope of the rule should be extended to all individually identifiable health information, including purely paper records. The privacy regulations should be uniform across all forms of identifiable health information and across all holders of such information. Having uniform regulations apply to all medical records would simplify the burden for covered entities to comply with.

The NCVHS also recommends that HHS use all available authority (or all available means to extend HHS authority) to try to achieve uniform regulations across medical records, types of records, and types of covered entities. For example, the conditions of participation under Medicare and Medicaid could be utilized to achieve uniform regulation.

Definitions

The definition of protected health information raises serious problems outside the treatment and payment process. Within the treatment and payment process, we can safely assume that all information about data subjects is protected health information. As a result, we do not encounter major line drawing problems. However, for employers or life insurers, the same assumption does not work. These non-medical record keepers routinely maintain other, non-health, information on individuals. How can they tell when personal information is protected health information within the meaning of the rule? Schools would present the same problem, except that the rules unfortunately and inappropriately exempt most schools from the health privacy rules altogether. We believe that there is a lot of confusion in the definition and this needs to be clarified.

The definition of health plan excludes health care payment under property and casualty insurance. Putting aside the issue of workers compensation, the definition creates a significant loophole for insurers who want to avoid the scope of the privacy rules in order to use health information for marketing or other uses unrelated to health. From the perspective of a patient, the nature of the policy is not relevant. When a casualty insurance company pays for health care, the patient will think that the company looks the same as other insurance companies. Yet the rule denies a patient privacy rights for property and casualty insurance information. Sometimes, treatment may continue while the ultimate source of payment (property policy vs. health policy) remains unknown, perhaps for months or years. Will information be subject to the privacy rule in the interim, and how will covered entities or others know?

Workers compensation is a complex subject that requires special treatment and reasonable accommodation. However, like other casualty insurance, it is not entitled to a complete exemption. The Department should not evade its responsibility to address these difficult issues by simply exempting them. If necessary, a separate and subsequent rulemaking should consider how to meet confidentiality interests of patients while allowing workers' compensation to be administered efficiently.

The definition of designated record set has two fundamental problems. First, record keepers will find it impossible to determine how to apply this term under the privacy rule. Second, the definition relies upon an outmoded and discredited concept from the Privacy Act of 1974. The Privacy Protection Study Commission recommended abandoning the ''retrieved in fact'' standard in the Privacy Act of 1974 more than twenty years ago. We believe that this definition will be difficult to operationalize and recommend that this definition should be revisited.

The definition of individual excludes foreign military and foreign diplomatic personnel and their dependents. The commentary offers no adequate justification for this exclusion. If it only applied to records maintained directly by the federal government, then the problems inflicted by the exclusion would fall exclusively on the federal government. But it includes care paid for by the Department of Defense, and this means providers, plans, and clearinghouses will have some records. This is a specific problem which needs to be addressed in the rule.

The term research information unrelated to treatment is not clear. The need for the term is elusive. There is an inability to understand the point of the term and its associated substantive provision. Regular research information is subject to IRB oversight. This category of research information is apparently not. The recognition of two separate categories of research information is confusing and potentially troublesome. There is a need for more explanation. The NCVHS recommends that there be no distinction in the categories of research. All research should be treated the same.

The definition of treatment includes disease management as an included function. Disease management is not a defined term and this creates one of the biggest loopholes in the rule. Protected health information could be disclosed to virtually anyone—including marketers and employers—under the guise of disease management. It is essential that this loophole be closed. The potential breadth of the term is evident from a definition recently adopted by the Disease Management Association of America:

Disease management is a multidisciplinary, continuum-based approach to health care delivery that proactively identifies populations with, or at risk for, established medical conditions that: supports the physician/patient relationship and plan of care; emphasizes prevention of exacerbations and complications utilizing cost-effective evidence-based practice guidelines and patient empowerment strategies such as self-management education; and continuously evaluates clinical, humanistic, and economic outcomes with the goal of improving overall health.

It is difficult to imagine any privacy-invasive use or disclosure of patient information that could not be justified as disease management under this definition. The definition fails to recognize that patient privacy and patient consent are relevant limiting factors in disease management activities. We do not recommend the adoption of this definition in the

regulations. Rather, we recommend that functions that might be called disease management and are prohibited under this rule be identified.

Treatment, Payment and Health Care Operations

There was a divergence of opinion among the Committee regarding informed consent versus statutory authorization. Concern was expressed that statutory authorization undercut traditional codes of medical ethics and that informed consent should be preserved. However, many NCVHS members felt that statutory authorization provided a better, more uniform level of protection than the case by case application of informed consent. Some NCVHS members expressed concern that the proposed rules will interfere with good clinical care. The issue of how much access physicians should have to the records of non-patients and whether consent is required needs to be clarified.

Minimum Necessary

The NCVHS supports the concept of minimum necessary use and disclosure. The Committee, however, would add an additional standard: minimum identifiable form. Minimum identifiable form would limit the amount of identifiable data. For example, rather than using name, one would use another identifier. Therefore, any use or disclosure would be the minimum amount of protected health information necessary to accomplish the intended purpose of use or disclosure in a minimum identifiable form.

Statutorily mandated public health requests are recurring and routine and involve a broad range of information for epidemiological investigations. This rule should not unduly interfere with these requests. These requests are established by a state law and rules that are published with public comment. This requirement should also not require duplication between tasks that are already accomplished by an IRB and Privacy Board approved research. It does not make sense to ask a covered entity to create (or contract) with an IRB or privacy board and then also have to review the board's findings itself.

The covered entity is not likely to have the expertise needed to make fine distinctions regarding minimum necessary in the research context. The regulation could accomplish their purpose by simply requiring covered entities to verify that the research received IRB (or privacy board) approval.

Several members of the NCVHS recommend exempting treatment from the concept of minimum necessary use and disclosure. Some members believe that the concept is appropriate for treatment, payment and health care operations.

The following language is a suggested addition to the minimum necessary rule:

> All procedures and policies that covered entities develop should take into consideration the minimum necessary principle. However this rule should never compromise patient safety, and requests for protected data for patient treatment, and operations and payment and public health should be exempted from the requirement of individual application of this rule to each specific request. Further research requests will be deemed to have satisfied these requirements if the covered entity has verified receipt of the signed approval of an IRB or privacy board.

Right to Restrict

The choice made by the rule to allow disclosures without authorization for payment and treatment is a compromise that only works if the small percentage of patients who want additional restrictions on routine disclosures can be reasonably accommodated. Giving individuals a realistic opportunity to seek restrictions on payment and treatment disclosures authorized by the rule is crucial. However, the proposed rule does not strike an adequate balance.

A health plan or provider might simply refuse all patient requests for additional restrictions because of a plan's or provider's noncompliance or administrative convenience. The commentary goes too far in telling covered entities that they can decline to even consider requests. Nevertheless, patients still need more consideration of their requests.

The solution is to require that covered entities negotiate with patients over disclosure restrictions in good faith and that they must provide a written reason for rejecting the request of a patient. Fairer negotiations and clearer explanations will provide those patients whose requests cannot reasonably be accommodated with an opportunity to make other arrangements for their health care.

Covered entities should also be required to keep track of how they handle patient requests for restrictions so that HHS can review the degree of good faith shown in handling requests. Without a record-keeping requirement, those at HHS charged with enforcement may be unable to determine if an entity treats patients' requests fairly and honorably.

Creation of De-Identified Data

The regulations could use further clarity defining what rules apply to what data. How do the rules about de-identified data interact with the rules about research and the rules about minimum necessary? If research is done on de-identified data is it exempt from all requirements? Are requests for de-identified data exempt from all reviews related to minimum necessary? The introductory section suggests that none of the other rules apply to de-identified data but it would be good to see that stated explicitly.

Business Partners

This section is confusing. Why is an exemption made to communications related to consultations and referrals for treatment under this section? The goal obviously is to facilitate traditional clinical communications. We would have presumed that this exemption was already provided by the exemption for treatment, operation and payment purposes. If this exemption is needed for consultations and referrals then it is also needed for a host of many other clinical communications between business partners, *i.e.* between commercial laboratory services and (these are not usually consultations or referrals for treatment), between pharmacies so they could transmit prescriptions, between Hospital A and Hospital B when the patient is under care at Hospital A, but Hospital B carries relevant clinical data. If this exemption is needed it should be broadened beyond the limited exemption for consultation and treatment.

The requirement to control information received from the covered entity for the purpose of consultation and treatment could be very difficult to implement. It is understandable why special protection might be required, but a consulting physician's history and physical, recorded as narrative (often dictated) text, will intermingle with the narrative information they obtain from the referring physician. How would one segregate the information obtained from the referring MD from that collected by the consult when it is buried in pure narrative text. Further, if read literally, the rule would preclude the sharing of such data with the physician who takes night call for the consulting physician. This also suggests that the broad example given for the sharing of data for patient care does not apply in many care situations.

The constraint would be more easily applied if the treating physician's summary of such data rolled into their

note were exempted from the strict requirements. Then, the separate records sent from another practice could be treated just as they are in many hospitals, as ''correspondence'' which goes into a special section of the chart. This correspondence section part of the chart has all of the protection of the medical record and can be used for ''treatment purposes'' but has additional restrictions on disclosure.

Covered entities disclose protected health information to many different business partners. Written contracts are appropriate for many of these disclosures in the way that the rule provides. However, the same procedure is not appropriate or practical for all relationships. For example, patient records may technically be ''disclosed'' to companies providing telephone service, delivery service (the law protects Postal Service mail against opening for inspection, but courier services have no similar legal restrictions), Internet service, credit card support, equipment repair, financial audits and legal service. Records may even be ''disclosed'' to moving companies hired to haul boxes from one location to another.

Telling each covered entity to negotiate an agreement with every company providing routine, standard services is unnecessary. The Department should identify as many standard disclosures as possible and should develop language that meets the requirements and intent of the privacy rule for service providers to incorporate in standard contracts. This will avoid the need for tens of thousands of individual negotiations. The idea is similar to the proposal to exempt disclosures for consultations for treatment. A similar approach for selected other disclosures will be the most efficient way of solving common problems and will reduce the costs of compliance significantly. It will also benefit contractors who will not find it necessary to repeat identical negotiations with their subcontractors.

Individual Authorization

The collection of authorizations for marketing uses and disclosures is fraught with potential abuses. In the past, disclosure of patient information for marketing purposes was unethical. The demands of marketers combined with the allure of profits for record keepers and growth of health plans that operate without any of traditional provider ethical constraints have significantly weakened disclosure standards to the detriment of patients. An unfortunate consequence of standardizing procedures for authorizations may be that demands on patients for marketing authorizations will increase as covered entities learn how to pressure patients into signing authorizations.

The Department should use the rule to stop the trend toward increased trafficking by marketers in patient data. Most patients strongly object to marketing activities based on identifiable patient data, but sick or inattentive individuals may not be able to understand or resist pressure from health plans or others to sign authorizations for marketing. One easy change is to expressly prohibit any clearinghouse from seeking patient authorization for marketing disclosures.

For plans and providers, there are several ideas. First, a covered entity should be prohibited from seeking consent from patients for any marketing disclosures that benefit a third party. Third parties that want patient information for marketing should be forced to obtain the authorizations directly from patients and without the assistance or intervention of a covered entity. The purpose is to remove any incentive that a plan or provider might have to do business with marketers.

Note that this suggestion applies only to disclosures and not to uses. A covered entity that seeks to market its own products or services directly to patients should be able to do so with notice and consent. However, any use that involves a disclosure of any type to a third party should not be permitted. Further, the marketing use must be for a service or product provided directly by the covered entity and not by the affiliated company. This type of restriction is necessary to prevent consumer marketing companies or others from purchasing health care providers just for the ability to access patient records for marketing purposes.

Second, it is not sufficient for an authorization to reveal that the covered entity requesting the authorization will gain financially from the disclosure. The identity of the person providing the financial incentive should be included on the authorization, along with the amount of the financial gain. If these requirements inhibit the marketing uses of identifiable health information, that would be appropriate.

Third, the rule should require full public disclosure of all marketing arrangements between covered entities and others. The details should be disclosed on the website of the covered entity or available upon the request of any person. If disclosure inhibits a covered entity from seeking authorizations for marketing, so much the better. No one should be permitted to hide a marketing campaign based on identifiable patient information behind a business confidentiality screen. Here too, the goal should be to discourage marketing using identifiable patient information.

Fourth, the rule should provide that all authorizations for marketing expire in six months. A short, fixed period for these authorizations is essential so that a casual agreement by a patient in a weak or confused moment will not result in a lifetime of marketing disclosures by an avaricious covered entity.

Additionally, accounting for marketing disclosures should include not only the person who received the information but the actual party in interest as well. For example, if a pharmacy disclosed patient data to a lettershop for a marketing campaign funded by a drug manufacturer, the accounting should identify both the lettershop and the manufacturer. Telling the patient that the XYZ Lettershop received the data is not as meaningful as telling the patient that the ABC Pharmaceutical Company benefited from the disclosure.

The proposed rule states that a covered entity may not condition treatment or payment on a patient's authorization. This is a step in the right direction, but it does not go far enough. The rule does not prohibit the use of financial incentives to induce a patient to sign an authorization. For example, a health plan could offer a discount to patients who sign an authorization. If allowed, financial incentives could be used unfairly. For example, a health plan could establish a high copayment but reduce it drastically for patients who sign an authorization. This conduct should be prohibited.

The rule does not require the use of a contract between a provider and a pharmaceutical company, but it requested comment on the idea. In our view, a contract that identifies the patient as a third party beneficiary is valuable. At best, the Department's enforcement will be able to identify, investigate and sanction only a small fraction of abuses. By giving patients enforcement rights as third party beneficiaries under contracts, patients will be able to supplement the work of the Department by seeking enforcement of their own rights in court. The rule should not only require contracts with third party beneficiary clauses for arrangements between providers and pharmaceutical companies, but it should require such contracts for all allowable arrangements between covered entities and anyone seeking information for a marketing purpose.

The rule should provide that all authorizations be dated on the day they are signed. No one should be allowed to collect an authorization to become valid on a date in the future to be designated by the person seeking the authorization.

The provision in section 164.508(a)(2)(iv) that prohibits a covered entity from seeking an authorization covering treatment, payment, or health care operations needs to be rethought. At times, a patient or provider may need a signed consent to comply with a state or foreign law, or in other special circumstances. In other cases, a provider (*e.g.* a psychiatrist) that shares a patient's concern about confidentiality may affirmatively seek an authorization narrowing the provider's ability to disclose information. The proposed rule prevents that from happening. We suggest amending the provision to prevent a provider from routinely requiring a patient authorization for treatment, payment or oversight that permits more disclosures than allowed by the rule. If a provider wants either a narrower authorization or an authorization identical to the rule, the patient should be allowed to agree.

Health Oversight

The definition of health oversight activities includes almost any activity pertaining to government benefit programs. The rule should make it clear that government benefit programs requiring health information about applicants need authorizations. The authority to use health information in the oversight process should not be construed to include the initial collection of benefit information for routine health or welfare programs. Applicants should know when an eligibility decision requires health information. They should be asked to consent. Consent should be the default method for obtaining access to records.

The commentary says that the regulation allowing a health oversight agency to obtain health information does not create any new right of access to records. That point is absent from the rule. It is crucial to make this point clearly in the body of the rule.

Disclosures for health oversight can be a significant invasion of personal privacy. When they are necessary to serve a broader societal interest, patients deserve better protection. Some legislative proposals introduced in recent years include a policy that prevents information disclosed for a purpose such as health oversight from use in any administrative, civil, or criminal action or investigation against the subject of the record unless the action or investigation arises out of and relates to receipt of or payment for health care. It would be appropriate for the Department to include this policy in its rule.

Admittedly, there is some doubt about the authority of the Secretary to impose this type of patient protection through the rule to all oversight agencies. However, the Secretary has more than enough power to order all components of the Department to follow the policy. Accordingly, we recommend that the Secretary issue an administrative order prohibiting all Department components from using any patient records obtained for oversight activities in any administrative, civil, or criminal action or investigation against the subject of the record. It may be appropriate to allow an exception if the action or investigation develops evidence that the patient is engaged in health care fraud or abuse. The same order should cover law enforcement, public health, and other non-consensual disclosures. An administrative order of this type could be issued immediately and without waiting for the privacy rule to take effect.

Judicial and Administrative Proceedings

The proposed rule permits a covered entity to disclose protected health information that relates to a party whose health condition is at issue in a proceeding and where the disclosure is pursuant to a lawful process such as a discovery order. The rule assumes that because the subject of the record is a party to the proceeding, the subject will have notice of discovery orders. This is not always true. The rule needs to be modified to require actual notice to the record subject or to the subject's lawyer. Further, access through this method should be limited to instances in which the record subject placed his or her medical condition or history at issue. If another party to litigation raised a medical question, then the party seeking the record should be required to obtain a court order rather than a routine discovery request.

The rule should establish a process that offers appropriate assurance to record keepers as well as adequate notice to the subject of the record. A person seeking protected health information through discovery should be required to notify the subject or the subject's attorney of the request for information. The person seeking the information should be required to provide the covered entity holding the information with a signed document attesting (1) that the subject of the record is a party to the litigation; (2) that the individual has placed his or her medical condition or history in issue; (3) the date on which the subject of the record received notice of the request; and (4) that ten days have passed after the notice and the subject of the record has not objected.

This procedure will assure that the subject of protected health information receives actual notice of a discovery request and that the subject can object in a timely fashion. Just because litigation involves an individual's medical condition, the individual's entire medical file will not necessarily be relevant. If litigation involves a broken leg, the disclosure of the plaintiff's psychiatric history may not be relevant. The general rule limiting disclosures to the minimum amount of information necessary to accomplish the purpose should be fully applicable. Patients can use the rule to contest the scope of discovery requests. Of course, if a dispute arises over a discovery disclosure, the notice procedure allows the tribunal considering the matter to resolve it without any involvement on the part of the covered entity.

Law Enforcement

The NCVHS believes that the current proposal for law enforcement access is overly broad. The proposal allows any law enforcement agent to obtain health information without requiring a written request.

The rule should require that any routine request for information from the police be in writing and signed by a supervisory official. The proposed three-part test is useful and should be retained. However, unless law enforcement agencies make their determinations in a written and signed document, the requirement will be an ineffective barrier to appropriate access. An oral representation that the request qualifies under the test has little significance.

Law enforcement agencies should be obliged to state with some precision the information that they require. If the police need only the location of a patient, they should not obtain access to the complete medical record. The police must provide enough information about their needs to allow application of the minimum purpose rule.

The commentary says that substance abuse records continue to be covered by 42 U.S.C. 290dd–2. That statement belongs clearly in the rule itself or else it will create unnecessary confusion.

The rule governing disclosures for intelligence and national security activities needs reconsideration. As written, the provision allows a large number of employees of many different

agencies to make requests for health records. The rule requires no writing or involvement by supervisory personnel of the requesting agency. The rule offers no protections to patients. It is far from apparent why any personnel of the National Reconnaissance Office or the other agencies identified in the law as part of the intelligence community need the ability to seek health records.

Nothing in the Privacy Act of 1974 allows such broad and unrestricted access by intelligence agencies to health records or even to less sensitive records about individuals. The intelligence community needs to make its case for access to federally maintained health records in a public way. The rule should be revised to permit disclosures only for those specific needs. Further, all requests for access should be accompanied by a written request signed by a supervisory official of the agency.

Governmental Health Data Systems

The commentary tries to make the case for permitting open-ended authority for the collection of health information for health data systems with a variety of functions. We do not oppose allowing legitimate health data systems to obtain patient information under defined circumstances when information in the data system has adequate protection. The rule, however, imposes no procedural or substantive requirements on disclosures to health data systems. Indeed, the rule allows disclosure of health data for policy, planning, regulatory, or management functions unrelated to health care.

Requiring verification of identity, as provided in section 164.518(c) is appropriate, but the suggestion that verification presents a significant barrier to access is wrong. The standard for access is so broad that dozens of federal and state agencies with no direct health responsibilities could legitimately obtain information. Virtually any government agency in the United States could use this provision to seek health records unless expressly prohibited by law from doing so. Under the verification rule, agency personnel need only show an identification card and orally state that they qualify for access.

The rule needs several changes to address access by agencies that do not have express statutory authority to obtain patient data. First, an agency seeking data should be required to inform the public of its request. Many requests will be routine and continuing so a public notice requirement will not be onerous. The notice should allow for public comment before any actual disclosures. Second, if data collected for a governmental health data system can be used in any way against a patient, then the public notice should be required to explain all of the possible consequences. Third, the requesting agency should be required to make a written request, state the reason for the request, and identify all planned uses of the information. Fourth, the rule should require the removal of identifiers at the earliest opportunity consistent with the purpose of access. Finally, the purposes for authorized disclosure need to be much more carefully defined and limited to health care functions.

Directory Information

The proposed rule is far too impractical. The rule requires agreement by patients. Lawyers are likely to interpret this to require writing. How else can a covered entity document patient approval when a dispute arises? The commentary says that verbal agreement is adequate. The rule itself says no such thing. Even if it did, providers would still face the practical requirement of documenting that the patient was asked. A failure to check a box on an admission form could open providers to liability.

Allowing verbal agreement is impractical in other ways. Spend time in an Emergency Department where dozens of patients await care. When a physician is ready for the next patient, a nurse enters the waiting room and calls the name of the patient. The presence of the patient in an emergency room is directory information, and the announcement is a disclosure. If a patient objected to the release of directory information, then how would the nurse find the next patient?

When disclosing directory information, privacy must yield to the practicalities of the world. Telling emergency department personnel that they must ask each patient for permission to call his or her name will only create burdens and unnecessary liability for providers. The same will be true in any physician's office. It is sufficient to allow a patient with a special concern about directory information to step forward with that concern and make a special arrangement. The Department should reexamine the lesson from the Maine health privacy law that the state legislature withdrew and revised because it imposed impractical limitations on the operations of the health care system. The public will not tolerate a privacy law that is not practical and that imposes unreasonable burdens on patients and their families.

Banking and Payment Processes

The proposed rule addresses a problem, but the rule is too broad.

Disclosures to a bank or other financial institution without express patient consent should only be permitted after a patient offers a check, credit card or other payment method to the provider. The presentation of a payment method is the moral equivalent of consent for disclosures necessary to complete the transaction. The rule should expressly make payment disclosures contingent on a prior patient action. Presentation of a check or credit card or a standing authorization of a payment method would suffice. However, it should be improper to assume that a patient who previously paid by credit card intended to continue that payment method without evidence supporting the intention.

No provider should be able to query banks or other institutions looking for someone who has funds to pay a bill. Further, the provision should expressly exclude bill collectors from receiving information. Bill collectors should be business partners and fully subject to the rule because of their relationship with providers. Disclosures to credit bureaus by covered entities should require patient consent unless a limited disclosure reveals no protected health information at all. However, a credit card company should be able to disclose an unpaid bill to a credit bureau under applicable law even if the bill covers health care services. A disclosure to the credit bureau would not normally identify the nature of the transaction that gave rise to the debt, unless the credit card is exclusively for health expenses.

Finally, the rule should expressly ban the disclosure to financial institutions of any diagnostic information or other detailed treatment information. If questions arise about a transaction that might justify any detailed disclosure, the patient involvement and express consent should be required. The suggestion in the commentary that disclosures be limited to specific data elements is entirely appropriate, but the rule should expressly list the elements.

Research

For most part, this is a good and well-balanced proposal. However, clarification is needed about how the other rules in this regulation interact with the research rules. There is a potential problem with placing all the burden in the covered entity. That could be a real disincentive for covered entities to participate in research—especially if the covered entity was not

a research hospital and not culturally attuned to the value of research. Instead of placing the full burden on the covered entities would it be possible to create a contract relationship between the researcher and the covered entity, as the regulations require for business partners?

The justification for the additional requirements beyond the existing IRB requirements is also hard to understand. Much traditional medical research involves medical data and often involves medical records. The strong distinction between medical research and medical record research is arbitrary and contrived. Further, most of the ''new'' and additional requirements are contained in, or implicit to, the existing IRB requirements. Patient confidentiality must always be addressed for current IRB protocols to apply. Finally, the argument that not adding the former new rules to the common rules on the basis of creating differences between IRBs and privacy boards is not convincing. The two are different in many dimensions even after these added requirements.

The business of destroying identifiers is repeatedly described as a good thing. We are unaware of any defense of that position or any experience that suggests destroying such links is good. There are many clinical situations where new information about a patient could interact positively with information previously collected about a patient. With the regulations as it stands we could not. It would be better to find another solution to the previous concern (e.g. require heavy encryption of the entire files when they were no longer needed for the research and leaving the keys in the hands of NIH or some other group).

Next-of-Kin

The rule's next of kin provision is another example of a policy that is impractical. We recommend that next-of-kin disclosures be allowed for oral disclosures of protected health information about an individual to the next of kin or to a person with whom the individual has a close personal relationship if (a) the entity has no reason to believe that the individual would consider the information to be especially sensitive; (b) the individual has not previously objected; (c) the disclosure is consistent with good medical or other professional practice; and (d) the disclosure is limited to information about current health treatment.

Requiring verbal agreement by patients will not work well in the real world. Lawyers for covered entities are still likely to insist on a writing to prove that the entity asked and that the patient agreed. Without documentary evidence, an entity faces the prospect of liability for any disclosure just on procedural grounds.

It is easy to envision circumstances in which the failure to obtain verbal consent will create real world disruptions. The commentary seeks to deal with some (*e.g.* disclosures by a pharmacist) but the attempt to create exceptions in this fashion is directly inconsistent with the stated rule. If the Department can tolerate these ''loopholes'', it should do so more generally. The overwhelming impracticality of the requirement for verbal agreements will increase cost, create enormous disruptions and impositions, and ultimately undermine the privacy effort. Once again, we refer to the recent Maine example where the state legislature withdrew a rule that violated the expectations of patients and unduly burdened patients and their families.

Application to Specialized Classes

The special rules provided in this section are too broad, except the rule for the Department of Veterans Affairs. The VA exception is the only one that seems narrow and specifically responsive to an apparent need. In the other cases, the government may have some legitimate needs for access to health records for individuals in the military and intelligence community, and less likely, the Foreign Service. However, the permitted disclosures are too broad and do not include adequate procedural protections for patients.

In most cases, the consent of the record subject should be sought as a first resort, except in emergency circumstances. Only where there is demonstrable reason that consent is inappropriate should the rule authorize other methods of access. The requirement for publication of a notice by the Armed Forces is a step in the right direction, although it does not go far enough by requiring public comment. At a minimum, intelligence agencies and the State Department should be required to publish a similar rule defining the scope and circumstances of access to health records.

The Foreign Service disclosures are especially troublesome. We cannot imagine why the State Department needs to obtain health records of Foreign Service members or of family members of those who may serve abroad without any notice or consent. The State Department has no comparable authority today to obtain health records without consent. If the State Department's current inability to obtain records without consent creates insurmountable difficulties, the case has not been presented publicly. Consent should be the preferred and only method for access for Foreign Service disclosures. The same policy should apply to family members of employees in the intelligence community. If consent for necessary disclosures cannot be obtained, the proper remedy is to deny the foreign assignment. Obtaining information without consent is inappropriate, and it will likely conflict with state laws and policies on confidentiality. Because stronger state laws will continue to apply, the best that this rule could accomplish is to authorize requesting disclosures in some states but not others. Regardless, it is difficult to envision circumstances that would prompt a physician to disclose patient records to the State Department.

Notice of Information Practices

Any covered entity that maintains a website for public use should be required to post its current notice of information practices on the web for public inspection. If an entity does not maintain a website, the public posting rule should not apply until the covered entity otherwise establishes a website.

The rule proposes to allow a covered entity to change its notice any time. This is a difficult issue, and the rule takes a practical position. However, the Department should consider efficient ways to make covered entities more accountable for their privacy policies and changes to privacy notices.

First, a covered entity should be required to maintain for public inspection a log of all past notices with changes highlighted. Second, if a covered entity maintains a website for use by patients or the public, it should be required to put a log of all notices and changes on the website. Public disclosure of changes will provide some degree of accountability by inhibiting entities from making unreasonable or unnecessary changes. Third, covered entities that have Internet capabilities should be required to establish listservs for sending email notification of any change to the standard patient notice. Mail notices would probably be too expensive to justify. Email notices would be nearly cost-free.

Access for Inspection or Copying

The rule permits a covered entity to deny access when a disclosure would be reasonably likely to endanger life or physical safety of the individual or another person. We disagree with the

policy, at least in so far as it permits the withholding of information from a patient, because that patient would be placed in danger. The circumstances that would trigger this type of denial are so unlikely that the exception is not worth keeping. There is no evidence from experience with the Privacy Act of 1974 or state laws or policies regarding patient access that this exception is justified. Patients should be able to obtain access to their own records without any concern about the consequences to themselves.

By allowing a covered entity to deny access on the basis that disclosure will harm the subject of the record (no matter the standard), the rule allows for a complex and expensive administrative process. Record keepers may simply refuse all requests until the provider who created the record determines in writing that disclosure will not cause harm. An insurer or health plan that is not a provider could use this excuse to delay or deny all patients with access. Providers who are most capable of making the determination may have no incentive to do so, and they may simply ignore or delay responding to requests from covered entities for opinions. The result will be that any covered entity can use potential harm to the patient as an excuse for not complying with an access request.

The availability of procedural denials and delays creates an opportunity for covered entities to deny patients their rights. If retained, the exception should include these safeguards: (1) The exceptions should be considered to be permanently waived if not properly invoked within thirty days; (2) the rule should expressly provide that the exception cannot be used to withhold an entire record; (3) covered entities should be required to use the exception in good faith; (4) the burden of justifying the exception should expressly belong to the record keeper, and the record keeper should be expressly prohibited from asking the record subject to obtain approval from previous providers; and (5) all determinations of harm must be made by health professionals who must be identified by name if an individual is denied access to a record on the basis of a finding of harm.

By creating an exception that requires record keepers to exercise judgment, the rule creates an unnecessary liability. Covered entities that receive requests will worry that they will be liable if a disclosure results in harm, no matter how unlikely it may be. A rule that did not allow for an exception based on harm to the record subject would not present the same concern about liability. The result would be a simpler administrative process, more ready patient access, and less stress for covered entities.

The rule permits a covered entity to charge a reasonable, cost-based fee for copying. The rule should be more specific. We have enough experience from the early days of the Freedom of Information Act to know that a loosely drafted fee schedule will result in high fees that impede access to records. A fee that is three times the direct and indirect cost may qualify as ''cost-based'' and still be excessive. We suggest that the fee be limited so that it does not exceed the lowest standard charge imposed by the covered entity for providing copies in other circumstances. In the alternative, the fee should be limited to direct costs of copying under a published fee schedule.

Accounting of Disclosures

The rule does not require disclosure to the record subject of any accounting records for disclosures for treatment, payment, and health care operations. If audit trails of disclosures for treatment, payment, and health care operations exist, then record subjects should have the right to see the audit trails. Some institutions already maintain complete audit trails, and there is no reason to deny record subjects access to the trails when they exist.

Whether audit trails are valuable enough to require for all disclosures is a more complex decision. Routine activities for a single hospitalized patient may result in dozens or even hundreds of audit trails a day. An enormous volume of records would be created if the rule required recording all accesses. On the other hand, audit trails have great potential for preventing abuse of records. Because most abuses are the result of activity by insiders, excluding disclosures for treatment, payment, and health care operations from an audit trail requirement would destroy the deterrent value of the audit trails. The rule should not discourage institutions from maintaining full audit trails. However, when the audit trails exist, record subjects should have access to them.

Audit trails for paper records are too expensive to require. Similarly, disclosures of information between providers through personal communications would also be expensive and cumbersome to record in an audit trail. However, when access to records comes through a computer, maintaining an audit trail is simple because it can be accomplished automatically. We recommend that the rule encourage cost-effective and practical audit trails for treatment, payment and oversight (as well as all other disclosures) for computer systems. This should be prospective so that it only applies to new computer systems placed in service at some time in the future. If record-keepers have sufficient notice of the requirement, it will be relatively easy to include an audit trail capability at little additional cost.

The rule allows an exclusion from the audit trail requirement for law enforcement or health oversight disclosures on written request. Under this rule, it will be routine for law enforcement and oversight agencies to seek exclusion from accounting every time they request a health record. This should not be acceptable. If there is an adequate reason for exclusion, the rule should require a court order. Obtaining a court order will establish a sufficiently high procedural barrier so that exclusions will not be sought casually. In the alternative, if a written request for exclusion is acceptable, the request should be dated, signed by supervisory official, and contain a certification that the official is personally familiar with the purpose of the request and the justification for exclusion from accounting. It would be better if the rule required that the entire request for exclusion be handwritten by the supervisory official.

Amendment or Correction

The rule permits a covered entity to refuse a request for correction if it did not create the information at issue. This limitation makes the amendment process ineffective. For example, many records at insurance companies will not be correctable because insurance company records mostly consist of claims from providers. The insurance company can refuse most requests for correction on strictly procedural grounds. At hospitals, incorrect records created by providers long-since dead or by health plans no longer in operation could remain uncorrected. The proposed rule for correcting a record may force a patient back through a trail of record-keepers that extends for decades. It will be an impossible challenge.

Even worse, the rule actually provides a defense to the hospital that does not want to correct a record that came from another source. Ethically, a provider would have an obligation to make sure that the questioned record is accurate. Under the rule, not only does a provider have no such obligation, it has a defense should it choose to deny a request for correction.

If a covered entity uses health information to make decisions about an individual, it must be required to

consider in good faith any request for correction or amendment. The proposed rule establishes a policy that allows a covered entity to use information to affect the rights, benefits, or treatment of an individual but it does not require the entity to even consider a request for amendment in some circumstances. It is not necessary to require a covered entity to change a record that it did not create in some circumstances, but the covered entity must be required to consider the request in good faith if it is using the information to make decisions about the record subject.

Relationship to State Laws

While a State may submit a written request to the Secretary to except a provision of State law from preemption, it is recommended that the Secretary prior to granting the waiver give notice to the citizens of the State.

Definition of Protected Health Information (Sec. 164.504)

The definition of protected health information excludes individually identifiable health information of inmates of correctional facilities and detainees in detention facilities. The NCVHS is opposed to exempting inmates and detainees from the proposed rule. Information about this vulnerable population should be protected to the extent possible without jeopardizing the safety of the facilities or inmates. For example, access to schedules that would jeopardize security would not be provided.

We appreciate the opportunity to offer these comments and again congratulate the Department on a comprehensive regulation.

Sincerely,

John R. Lumpkin,

Chairman, National Committee on Vital and Health Statistics.

CONTACT PERSON FOR MORE INFORMATION:

Information about the Committee as well as the text of the HIPAA recommendations is available on the NCVHS website (http://ncvhs/hhs/gov or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–7245.

Dated: June 28, 2000.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation, Executive Staff Director, National Committee on Vital and Health Statistics.

[FR Doc. 00–17339 Filed 7–7–00; 8:45 am]

BILLING CODE 4151–05–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research Quality

AGENCY: Agency for Healthcare Research and Quality.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Friday, July 28, 2000, from 8:30 a.m. to 4 p.m. and is open to the public.

ADDRESSES: The meeting will be held at 6010 Executive Boulevard, Fourth Floor, Rockville, Maryland, 20852.

FOR GENERAL INFORMATION CONTACT: Anne Lebbon, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852, (301) 594–7216. For press-related information, please contact Karen Migdail at 301–594–6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6662 no later than March 10, 2000.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Council for Healthcare Research and Quality. In accordance with its statutory mandate, the Council is to advise the Secretary and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve outcomes, reduce costs of health care services, improve access to such services through scientific research, the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members. Donald M. Berwick, M.D., the Council chairman, will preside.

II Agenda

On Friday, July 28, 2000, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairman. The Director, AHRQ, will present the status of the Agency's current research, programs and initiatives. Tentative agenda items include technology assessment, international health, research on health insurance and costs, and the Agency's grant process. The official agenda will be available on AHCPR's website at *www.ahrq.gov* no later than July 10, 2000. The meeting will adjourn at 4 p.m.

Dated: June 27, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–17370 Filed 7–7–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community/Tribal Subcommittee to the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee meeting.

Name: Community/Tribal Subcommittee (CTS).

Times and Dates: 9 a.m.–4:30 p.m., July 26, 2000; 9 a.m.–3 p.m., July 27, 2000.

Place: Tulane University, School of Public Health, CAEPH, Suite 800, 1440 Canal Street, New Orleans, Louisiana 70112

Status: Open to the public, limited by the space available. The meeting room accommodates approximately 35 people.

Purpose: This subcommittee brings to the Board of Scientific Counselors advice and citizen input, as well as recommendations on community and tribal programs, practices, and policies of the Agency. The subcommittee reports directly to the Board of Scientific Counselors.

Matters To Be Discussed: Issues and concerns of the Community/Tribal Subcommittee as related to ATSDR's community and tribal programs. ATSDR will provide an update on the Environmental Health Research Agenda, initiate a discussion on how recently finalized Public Health Assessments (PHAs) have addressed community concerns (more extensive discussion of this topic will occur at a future meeting); the process for conducting an evaluation of PHAs; and, the CTS will give an update on cultural sensitivity training.

Contact Person for More Information: Sandra Coulberson, Principal ATSDR

Contact, ATSDR, M/S E–56, 1600 Clifton Road, NE, Atlanta, GA 30333, telephone 404/639–6002.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 3, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–17292 Filed 7–7–00; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–47–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

AIDS Prevention and Surveillance Project Reports (0920–0208)—extension—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC)—proposes to continue data collection for the AIDS Prevention and Surveillance Project Reports, previously approved under OMB No. 9020–0208. This request is for a 3-year extension of clearance. CDC funds cooperative agreements for 65 HIV Prevention Projects (50 states, 6 cities, 7 territories, Washington, D.C., and Puerto Rico). The cooperative agreements support counseling, testing, referral, and partner notification programs conducted by official public health agencies of states, territories, and localities (project areas). HIV counseling and testing in STD clinics, Women's Health Centers, Drug Treatment Centers, and other health agencies has been described as a primary prevention strategy of the national HIV Prevention Program. These project areas have increased HIV counseling and testing activities to specifically reach more minorities and women of child bearing age.

CDC is responsible for monitoring and evaluating HIV prevention activities conducted under the cooperative agreement. Counseling and testing programs are a major component of the HIV Prevention Program. Without data to measure the impact of counseling and testing programs, priorities cannot be assessed and redirected to prevent further spread of the virus in the general population. CDC needs information from all project areas on the number of at-risk persons tested and the number positive for HIV. The HIV Counseling and Testing Report Form provides a simple yet complete means to collect this information.

Respondents will be able to use either a manual or an electronic scan form. Seventeen respondents (project areas) will use the manual data collection tool. It takes approximately 2 hours to complete the form. The respondents will complete the form 4 times each year for a total burden of 8 hours per year per project area. Forty-eight (48) respondents (project areas) will use the scan form or client record format. It will take approximately 15 minutes for each project area to transfer data electronically on a quarterly basis for a total burden per project area of 1 hour per year. Therefore, the total annualized burden hours are 184. This request is for a 3 year extension.

Respondents	Number of respondents	Number of responses per respondent	Average burden response (in hrs.)
Manual Form Project Areas	17	4	2
Scan Form Project Areas	48	4	.25

Dated: June 30, 2000.

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17177 Filed 7–7–00; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00006]

Intervention Epidemiologic Research Study of HIV/AIDS; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to support a prospective study to develop and evaluate the role of different levels of assistance with and observation of the administration of antiretroviral (ARV) therapy for the treatment of HIV–1 infection. This program addresses the ''Healthy People 2010'' focus area of HIV.

The purpose of the program is to investigate whether different levels of support have an impact on: improving virologic, immunologic, and clinical outcomes of HIV disease; on the development of HIV–1 ARV drug resistance; and on therapeutic plasma drug concentrations. Innovative applications are invited that assess the impact of three different levels of administration and oversight of antiretroviral treatment: (1) Directly observed antiretroviral therapy (DART), the relative ''gold standard'' of what is achievable with maximum adherence support—any setting or system in which antiretroviral medications are routinely dispensed by dose and per-dose medication record is kept. Possible examples of such settings include but

are not limited to residential treatment facilities, prisons, and methadone clinics; (2) Standard of care: provision of the level of support typically available through comprehensive HIV care clinics, and may include measures such as individual counseling, group counseling, and use of ancillary aids; (3) Intensive adherence support: any setting or system for support in which the HIV-infected person has at least weekly, and ideally more frequent, contact with the adherence support model. Possible settings include but are not limited to day health centers, methadone clinics, or visiting/home services. This arm could allow for the development or refinement of creative adherence support systems that may be integrated into ongoing care and services.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $400,000 is available in FY 2000 to fund approximately 2 awards. It is expected that the average award will be approximately $200,000. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period, within a project period of up to four years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of these programs, the recipient will be responsible for the activities listed under 1. Recipient Activities, and CDC will be responsible for conducting activities listed under 2. CDC Activities.

1. Recipient Activities

Successful applicants addressing the same research issue should be willing to jointly develop the study protocol in collaboration with other CDC-sponsored researchers. This will include developing and using common data collection instruments, specimen collection protocols, and data management procedures, as determined in post-award grantee planning conferences. Recipients will be encouraged to work collaboratively as a study group to:

a. Develop the research study protocols and standardized data collection forms, specimen collection, and laboratory testing across sites. This includes transfer of certain specimens to a central repository and transfer of other specimens to designated laboratories for specific laboratory studies.

b. Identify, recruit, obtain informed consent from, and enroll an adequate number of study participants as determined by the study protocols and the program requirements.

c. Continue to follow study participants as determined by the study protocols.

d. Establish procedures to maintain the rights and confidentiality of all study participants.

e. Contribute blood specimens of study participants as determined by the protocol requirements for shipment and storage at a centralized repository system.

f. Conduct data analysis with all collaborators as well as present and publish research findings.

2. CDC Activities

a. Provide technical assistance in the design and conduct of the research.

b. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. Assist in designing a data management system.

d. Assist in performance of selected laboratory tests.

e. Work collaboratively with investigators to help facilitate research activities across sites involved in the same research project.

f. Assist in the analysis of research information and the presentation and publication of research findings.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop your application. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Follow the directions for completing the application that are found in the Public Health Service (PHS) 398 form.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit.

On or before August 17, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof or timely mailing.

Late Applications: Applications that do not meet the criteria in (1) and (2) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Applicants will be ranked on a scale of 100 maximum points according to the research area identified. Applications must demonstrate the applicant's ability to address the research in a collaborative manner with other recipients. Applications will be reviewed and evaluated based on the evidence submitted, as they specifically describe the applicant's abilities to meet the following criteria:

1. Recruitment, Retention, and Adherence to Study Protocol (35 Points)

a. Extent of applicant's experience in HIV infection epidemiologic research.

b. Evidence of ability to successfully recruit and follow HIV-infected persons in longitudinal research studies.

c. Evidence of ability to provide at least two or preferably three types of adherence support: DART (each dose dispensed and per-dose medication record kept); intensive adherence support (at least weekly and ideally more frequent contact with care model);

and standard of care (such as support provided at comprehensive HIV treatment clinics).

d. Ability to recruit and retain at least 50 and ideally 100 HIV-infected persons in each adherence model annually (150–300 persons total) fulfilling the objectives of the study. Multiple sites may be used to accomplish these goals.

e. Evidence of availability of comparable populations among the three adherence models, especially with regards to stage of disease, quality of clinical care, and antiretroviral experience.

f. Evidence of ability to collect complete data and to obtain regular blood samples and sufficiently large blood samples from HIV-infected persons for testing as will be determined in the study protocol.

g. Ability to oversee specimen collection for the timely processing, storage, and retrieval of laboratory specimens as needed for the study.

h. Ability to measure costs associated with adherence interventions as well as those associated with HIV care provision.

2. Description and Justification of Research Plans (25 Points)

a. Extent of familiarity and quality of experience pertinent to proposed research activities.

b. Understanding of research objectives as evidence by the high quality and scientific rigor of the proposed plan for research and a study design that is appropriate to answer research questions.

c. The inclusion of innovative approaches to provide intensive adherence support. These approaches may be existing or may be designed and implemented specifically for this study.

d. As more than one applicant may be funded, extent to which the applicant demonstrates willingness to work with all successful applicants to develop a common core research protocol across funded sites.

e. Feasibility of plans to follow study participants particularly treatment experienced patients. This includes demonstration of the experience of the investigator in following HIV-infected persons, and the comprehensiveness of the plan to protect the rights and confidentiality of all participants.

f. Thoroughness of plans for data management, data analysis, and laboratory analysis; reasonableness of data collected; and statistical rigor.

g. Extent to which the application demonstrates feasible plans for coordinating research activities of multiple local study sites, where appropriate, and with CDC. Letters of support from cooperating organizations that demonstrate the nature and extent of such cooperation should be included.

h. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

3. Research and Intervention Capability (20 Points)

a. Applicant's ability to carry out the proposed research as demonstrated by the training and experience of the proposed research team and organizational setting, including demonstration of ability to collect, manage, and analyze accurate data in a timely manner.

b. Demonstration of working relationships with the proposed investigators and extent to which services to be provided by external experts or consultants are documented by memoranda of agreement.

c. Demonstration of epidemiologic, behavioral, clinical, administrative, laboratory, data management and statistical analysis expertise needed to conduct proposed research.

d. Ability to sustain adherence support mechanisms at the cessation of study.

4. Staffing, Facilities, and Time line (20 Points)

a. Availability of qualified and experienced personnel with sufficient time dedicated to the proposed project.

b. Clarity of the described duties and responsibilities of project personnel.

c. Adequacy of plans for project oversight to assure quality of data.

d. Adequacy of facilities, equipment, data management resources, and systems for ensuring data security and patient confidentiality.

e. Adequacy of time line for completion of project activities.

5. Other (Not Scored)

a. Budget: the extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized.

b. Human Subjects: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. section 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.943.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Brenda Hayes, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00006, Centers for Disease Control and Prevention (CDC), Grants Management Office Room 3000, Attn: Colgate Building, 2920 Brandywine Rd., Mailstop E–15, Atlanta, GA 30341, telephone (770) 488–2741, Email address bkh4@cdc.gov

For program technical assistance, contact: Jeff Efird, MPA, Deputy Chief, Epidemiology Branch, Division of HIV/AIDS Prevention, Surveillance & Epidemiology, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–45, Atlanta, Georgia 30333, Telephone (404) 639–6130, E-mail jle1@cdc.gov

Dated: July 3, 2000.

Ron Van Duyne,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17294 Filed 7–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grant for Research on the Impact of Laws and Policies on Public Health, Program Announcement #00051

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grant for Research on the Impact of Laws and Policies on Public Health, Program Announcement #00051.

Times and Dates: 7 p.m.–7:30 p.m., August 1, 2000 (Open); 7:30 p.m.–9:30 p.m., August 1, 2000 (Closed); 8 a.m.–4:30 p.m., August 2, 2000 (Closed).

Place: Airport Crowne Plaza Hotel, Virginia Avenue, Atlanta, Georgia 30344. Telephone 404/768–6660.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #00051.

Contact Person for More Information: Richard A. Goodman, M.D., M.P.H., Senior Advisor for Science and Policy, Centers for Disease Control and Prevention, 1600 Clifton Road m/s D03, Atlanta, Georgia 30333. Telephone 404/639–7400, email rag4@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 3, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 00–17293 Filed 7–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Safety Research: Availability of Cooperative Agreements; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of research funds for fiscal year (FY) 2000 to support research in the following areas of produce safety, egg safety, development of extraction procedures of foodborne viruses from foods to enhance detection, and food service, transportation, and consumer practices. Approximately $600,000 will be available in FY 2000. FDA anticipates making three to four awards at $100,000 to $200,000 (direct and indirect costs) per award per year. Support of these agreements may be up to 3 years. The number of agreements funded will depend on the quality of the applications received and the availability of Federal funds to support the project. After the first year, additional years of noncompetitive support are predicated upon performance and the availability of Federal fiscal year funds.

DATES: Submit applications by August 24, 2000.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Maura C. Stephanos, Grants Management Specialist, Grants Management Office (HFA–520), Division of Contracts and Procurement Management, Office of the Director, Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7183, FAX 301–827–7106, e-mail: mstepha1@oc.fda.gov. (Applications hand-carried or commercially delivered should be addressed to rm. 2129, 5630 Fishers Lane, Rockville, MD 20852).

FOR FURTHER INFORMATION CONTACT: Regarding the administrative and financial management aspects of this notice: Maura C. Stephanos (address above).

Regarding the programmatic aspects of this notice: Marianna D. Miliotis, Food Safety Initiative Extramural Research Coordinator, Office of Plants, Dairy Foods, and Beverages (HFS–327), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4824, e-mail: mmilioti@bangate.fda.gov.

SUPPLEMENTARY INFORMATION: FDA will support the research studies covered by this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national activity to reduce morbidity and mortality and to improve the quality of life. Applicants may obtain a hard copy of the ''Healthy People 2010'' objectives, vols. I and II, conference edition (B0074) for $22 per set, by writing to the Office of Disease Prevention and Health Promotion (ODPHP) Communication Support Center (Center), P.O. Box 37366, Washington, DC 20013–7366. Each of the 28 chapters of ''Healthy People 2010'' is priced at $2 per copy. Telephone orders can be placed at the Center on 301–468–5690. The Center also sells the complete conference edition in CD–ROM format (B0071) for $5. This publication is available as well on the Internet at www.health.gov/healthypeople. Internet viewers should proceed to ''Publications.''

I. Background

FDA is mandated by the President's Food Safety Initiative (FSI) to reduce the incidence of foodborne illness to the greatest extent feasible. Research in food safety seeks to reduce the incidence of foodborne illness by improving our ability to detect and enumerate pathogens in the food supply and to find new ways to control them. In FY 1998, the Center for Food Safety and Applied Nutrition (CFSAN) obligated $2 million to support eight multiyear cooperative agreements. This extramural program inaugurated a novel collaborative research effort between CFSAN and academic scientists, and leveraged expertise, not found within FDA, to accelerate ongoing research. Collaborations such as these provide information critical to food safety guidance and policymaking, and stimulate fruitful interactions between FDA scientists and those within the greater research community.

In continuation of this effort, CFSAN/FSI will provide FY 2000 funds to be used for research to help ensure produce and egg safety, develop extraction methods for viruses in foods, and determine food storage practices from processing to consumption.

II. Research Goals and Objectives

The goals and objectives of this program will be to: (1) Ensure produce safety by standardizing inoculation methods for determining the efficacy of antimicrobial chemicals or technologies or for validation of Hazard Analysis Critical Control Point (HACCP) systems, particularly in fresh or minimally processed produce; (2) evaluate surrogate microorganisms for use in HACCP validation; (3) ensure egg safety by developing improved sampling and detection methods for detection of low-levels of and enumeration of *Salmonella* Enteritidis (*S.* Enteritidis) in eggs; (4) develop extraction and processing methods suitable for reverse-transcription polymerase chain reaction (RT–PCR) based identification/detection of foodborne viruses; and (5) obtain information to support the science behind the U.S. Public Health Service Food Code, which provides guidance to the retail and food service industry, as well as information to support guidance to the consumer.

Projects that fulfill any one of the following specific objectives will be considered for funding. Applications may address only one project objective; however, applicants may submit more than one application for any of the project objectives. The project objectives are listed below in order of priority.

A. Project Objective 1 (Priority #1)

The first priority is to develop extraction and processing methods suitable for RT–PCR based identification/detection of foodborne viruses, such as Hepatitis A virus (HAV) and Norwalk virus. Commodities of interest include raw or minimally processed foods, such as strawberries, raspberries, grapes, tomatoes, and seafood. Extraction and sample processing methods must not interfere or inhibit RT–PCR based detection of the virus(es) and be applicable for analysis of large or bulk quantities of foods. The entire methodology, from extraction to detection, must include appropriate and exhaustive positive and negative controls to ensure validity of the extraction, processing, and detection (RT–PCR based) methods. These controls must also include those designed to confirm or exclude the absence of viral particle/genome contamination among and/or between food samples and reagents.

B. Project Objective 2 (Priority #2)

The second priority is to determine the effect of different inoculation procedures (e.g. dipping, spraying, spotting) on the efficacy of disinfectants and intervention technologies to remove or inactivate microorganisms, and determine how procedures perform under practical conditions. Ensuring produce that is safe for the consumer to eat is a major priority. Research needed to address this issue includes standard inoculation methods for performing challenge studies. FDA has continually sponsored research in intervention strategies to mitigate the risk of foodborne illness and reviewed applications for new antimicrobial agents and intervention technologies. The initiative provides an opportunity to expand the range of research questions addressed by FDA in intervention strategies for standardization of inoculation procedures for testing efficacy of intervention strategies. Currently, challenge inoculation methods tend to allow limited times for attachment of cells to food surfaces (and often under unrealistic conditions). This makes interpretation of the results difficult. Published studies have also demonstrated problems with statistical reproducibility when the attachment period is lengthened. An ideal inoculation protocol would permit sufficient time for cell attachment under conditions simulating those encountered in food growing and processing environments, such as low nutrient levels and ambient temperatures. The protocol tests must include a comparison of application techniques including spot, spray, and dip inoculation methods.

C. Project Objective 3 (Priority #3)

To determine whether consumer and industry practices are sufficient to protect the consumer from foodborne illness, research is needed in the following areas:

(1) Examine acceptability of the U.S. Public Health Service Food Code's requirements for: (a) Four-hour holding limit for all foods at ambient temperature, (b) the appropriateness for cooling foods from 140 to 41 ½F in 6 hours, and (c) the potential impact for human health risks if hot foods are held at 130 ½F.

(2) Quantitatively describe whether cooking practices used in the home are sufficient to inactivate pathogenic bacteria, viruses, or parasites that may be present in specific foods.

(3) Explore consumer practices related to storage of selected food products, including when and where it is stored in the refrigerator, refrigerator temperatures, length of time refrigerated food is kept, and consumer knowledge and beliefs related to food safety and refrigeration.

D. Project Objective 4 (Priority #4)

To ensure that eggs are safe, there is a need to study egg safety, specifically sampling and detection methods for *S.* Enteritidis in eggs and layer flocks. Current egg sampling practices may fail to detect low levels of *S.* Enteritidis. Therefore, there is a need to:

(1) Develop improved sampling and detection methods to detect low-levels of, and more significantly enumerate, *S.* Enteritidis in eggs and layer flocks. The development of a sampling plan should be based on known incidence data to ensure that a negative test result from a sample, indicates with a high level of confidence that the organism is not present in the entire lot or shipment. The sampling plan should consider not only occurrence of *S.* Enteritidis, but also dispersion or distribution of this pathogen among groups of eggs, and should be statistically superior to present sampling and detection techniques.

(2) Develop better on-farm indicators for predicting whether eggs are contaminated with *S.* Enteritidis.

E. Project Objective 5 (Priority #5)

The fifth priority is to determine which microorganisms are most suitable for use as surrogates for foodborne pathogens and are appropriate for specific commodities in challenge

studies to validate microbial hazard reduction technologies. The experimental use of pathogenic microorganisms in food establishments or pilot plants is generally contraindicated, but it is necessary to perform challenge studies to validate microbial hazard reduction technologies. In order to overcome this problem, the comparison of surrogate microbes to pathogenic counterparts (bacteria, viruses, and parasites) is necessary. Surrogates that are appropriate for specific commodities should be proposed. They should exhibit similar growth and binding characteristics, on a target commodity, of the foodborne pathogen represented, and should exhibit equivalent resistance to common classes of disinfectants. Successful projects will recommend surrogates based on a range of comparative physiological, genetic, and kinetics studies.

III. Human Subject Protection and Informed Consent

A. Protection of Human Research Subjects

Some activities carried out by a recipient under this announcement may be governed by the Department of Health and Human Services (DHHS) regulations for the protection of human research subjects (45 CFR part 46). These regulations require recipients to establish procedures for the protection of subjects involved in any research activities. Prior to funding and upon request of the Office for Protection from Research Risks (OPRR), prospective recipients must have on file with OPRR an assurance to comply with 45 CFR part 46. This assurance to comply is called an Assurance document. It includes the designated Institutional Review Board (IRB) for review and approval of procedures for carrying out any research activities occurring in conjunction with this award. If an applicable Assurance document for the applicant is not already on file with OPRR, a formal request for the required Assurance will be issued by OPRR at an appropriate point in the review process, prior to award, and examples of required materials will be supplied at that time. No applicant or performance site, without an approved and applicable Assurance on file with OPRR, may spend funds on human subject activities or accrue subjects. No performance site, even with an OPRR-approved and applicable Assurance, may proceed without approval by OPRR of an applicable Assurance for the recipients. Applicants may wish to contact OPRR by facsimile (301–402–0527) to obtain preliminary guidance on human subjects issues. When contacting OPRR, applicants should provide their institutional affiliation, geographic location, and all available Request for Applications (RFA) citation information.

Applicants are advised that the section on human subjects in the application kit entitled ''Section C. Specific Instructions—Forms, Item 4, Human Subjects,'' on pages 7 and 8 of the application kit, should be carefully reviewed for the certification of IRB approval requirements. Documentation of IRB approval for every participating center is required to be on file with the Grants Management Officer, FDA. The goal should be to include enough information on the protection of human subjects in a sufficiently clear fashion so reviewers will have adequate material to make a complete review. Those approved applicants who do not have a current Multiple Project Assurance with OPRR will be required to obtain a Single Project Assurance from OPRR prior to award.

B. Informed Consent

Consent and/or assent forms, and any additional information to be given to a subject, should accompany the grant application. Information that is given to the subject or the subject's representative must be in language that the subject or his or her representative can understand. No informed consent, whether oral or written, may include any language through which the subject or the subject's representative is made to waive any of the subject's legal rights, or by which the subject or representative releases or appears to release the investigator, the sponsor, or the institution or its agent from liability.

If a study involves both adults and children, separate consent forms should be provided for the adults and the parents or guardians of the children.

C. Elements of Informed Consent

The regulations on informed consent are set forth in 45 CFR 46.116 and 21 CFR 50.25. The basic elements of informed consent are as follows:

1. Basic Elements of Informed Consent

In seeking informed consent, the following information shall be provided to each subject.

- A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.
- A description of any reasonably foreseeable risks or discomforts to the subject.
- A description of any benefits to the subject or to others which may reasonably be expected from the research.
- A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.
- A statement that describes the extent, if any, to which confidentiality of records identifying the subject will be maintained, and that notes the possibility that FDA may inspect the records.
- For research involving more than minimal risk, an explanation as to whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of or where further information may be obtained.
- An explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of research-related injury to the subject.
- A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

2. Additional Elements of Informed Consent

When appropriate, one or more of the following elements of information shall also be provided to each subject.

- A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable.
- Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.
- Any costs to the subject that may result from participation in the research.
- The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.
- A statement that significant new findings developed during the course of the research that may relate to the subject's willingness to continue participation will be provided to the subject.
- The approximate number of subjects involved in the study.
- The informed consent requirements are not intended to preempt any

applicable Federal, State, or local laws which require additional information to be disclosed for informed consent to be legally effective.

• Nothing in the notice is intended to limit the authority of a physician to provide emergency medical care to the extent that a physician is permitted to do so under applicable Federal, State, or local law.

IV. Reporting Requirements

A Program Progress Report and a Financial Status Report (FSR) (SF–269) are required. An original FSR and two copies shall be submitted to FDA's Grants Management Officer (address same as given above for Grants Management Specialist) within 90 days of the budget expiration date of the cooperative agreement. Failure to file the FSR (SF–269) on time may be grounds for suspension or termination of the agreement. Progress reports will be required quarterly within 30 days following each fiscal year quarter (January 31, April 30, July 30, October 31), except that the fourth report will serve as the annual report and will be due 90 days after the budget expiration date. CFSAN program staff will advise the recipient of the suggested format for the Program Progress Report at the appropriate time. A final FSR (SF–269), Program Progress Report and Invention Statement, must be submitted within 90 days after the expiration of the project period, as noted on the Notice of Grant Award.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least quarterly by the Project Officer and the Project Advisory Group. Project monitoring may also be in the form of telephone conversations between the Project Officer/Grants Management Specialist and the Principal Investigator and/or a site visit with appropriate officials of the recipient organization. The results of these monitoring activities will be duly recorded in the official file and may be available to the recipient upon request.

V. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements. These cooperative agreements will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity. For-profit entities must commit to excluding fees or profit in their request for support to receive grant awards. Organizations described in section 501(c)(4) of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive awards.

C. Length of Support

The length of support will be for up to 3 years. Funding beyond the first year will be noncompetitive and will depend on: (1) Satisfactory performance during the preceding year, and/or (2) the availability of Federal FY funds.

VI. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this RFA. Substantive involvement includes but is not limited to the following:

1. FDA will provide guidance and direction with regard to the scientific approach and methodology that may be used by the investigator.
2. FDA will participate with the recipient in determining and executing any: (a) Methodological approaches to be used, (b) procedures and techniques to be performed, (c) sampling plans proposed, (d) interpretation of results, and (e) microorganisms and commodities to be used.
3. FDA will collaborate with the recipient and have final approval on the experimental protocols. This collaboration may include protocol design, data analysis, interpretation of findings, coauthorship of publications and the development and filing of patents.

VII. Review Procedure and Criteria

A. Review Method

All applications submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness. Applications will be considered nonresponsive if they are not in compliance with sections VII.B and VIII of this document. If applications are found to be nonresponsive to this announcement, they will be returned to the applicant without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first level reviewers. Final funding decisions will be made by the Commissioner of FDA or his designee.

B. Review Criteria

The funding priority categories are as follows: Project Objective 1—first priority; Project Objective 2—second priority; Project Objective 3—third priority; Project Objective 4—fourth priority, and Project Objective 5—fifth priority.

Applicants must clearly state in their applications which of the above-established funding priority categories is relevant to their proposed project. Applications will be grouped, reviewed, and ranked within each funding priority category. Funding priority will start with the highest ranked applications under each of the five objectives, then the second highest, etc., until available funds have been exhausted. All applications will be evaluated by program and grants management staff for responsiveness. Applications considered nonresponsive will be returned to the applicant without being reviewed. Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their application. All questions of a technical or scientific nature must be directed to the CFSAN program staff, and all questions of an administrative or financial nature must be directed to the grants management staff (see the Information Contact section at the beginning of this document for addresses.) Applications will be reviewed and scored on the following criteria:

1. For Project Objective 3 only—Research should be proposed on commercial time/temperature practices, Food Code requirements, home cooking practices, or home refrigeration practices, that is within Project Objective 3 in Section II. Research Goals and Objectives of this document;
2. For Project Objective 4 only—Research should be proposed on sampling and detection of *S.* Enteritidis in eggs, or on farm indicators for predicting whether eggs are contaminated with *S.* Enteritidis, that is within Project Objective 4 in Section II. Research Goals and Objectives of this document;
3. For all Project Objectives—Whether the proposed study is within the budget,

and costs have been adequately justified and fully documented;

4. For all Project Objectives—Soundness of the rationale for the proposed study and appropriateness of the study design to address the objectives of the RFA;

5. For all Project Objectives—Availability and adequacy of laboratory facilities and equipment;

6. For all Project Objectives—Availability and adequacy of support services, e.g., biostatistical computer, data bases, etc., and;

7. For all Project Objectives—Research experience, training, and competence of the principal investigator and support staff.

VIII. Submission Requirements

The original and two copies of the completed Grant Application Form PHS 398 (Rev. 4/98) or the original and two copies of PHS 5161 (Rev. 6/99) for State and local governments, with copies of the appendices for each of the copies, should be delivered to Maura C. Stephanos (address above). State and local governments may choose to use the PHS 398 application form in lieu of PHS 5161. The application receipt date is August 24, 2000. No supplemental or addendum material will be accepted after the receipt date. The outside of the mailing package and item 2 of the application face page should be labeled: ''Response to RFA FDA CFSAN–00, Project Objective 1 (1–5).''

IX. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.)

Do not send applications to the Center for Scientific Research (CSR), NIH. Any application that is sent to NIH, that is then forwarded to FDA and not received in time for orderly processing, will be deemed unresponsive and returned to the applicant. Instructions for completing the application forms can be found on the NIH home page on the Internet at http://www.nih.gov.grants/phs398/phs398.html; the forms can be found at http://www.nih.gov/grants/phs398/forms—toc.html. However, as noted above, applications are not to be mailed to NIH. Applicants are advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by NIH on its applications. Applications must be submitted via mail delivery as stated above. FDA is unable to receive applications via the Internet.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 4/98). All ''General Instructions'' and ''Specific Instructions'' in the application kit should be followed with the exception of the receipt dates and the mailing label address.

The face page of the application should reflect the request for applications number RFA–FDA–CFSAN–00, Project Objective 1 (2, 3, 4, or 5).

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of DHHS or by a court, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: June 27, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–17276 Filed 7–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Wireless Technology Research; Effects of Radiofrequency Energy on Micronucleus Formation; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

The Food and Drug Administration (FDA) is announcing the following meeting: Radiofrequency Micronucleus Working Group. This is the initial meeting of a working group of national and international scientific experts convened to review the results of studies, previously conducted by Wireless Technology Research, L.L.C., on the effects of radiofrequency energy on micronucleus formation, and to recommend a statement of work for additional research. This meeting is being convened as the initial step in a Cooperative Research and Development Agreement (CRADA) between the Center for Devices and Radiological Health of FDA and the Cellular Telecommunications Industry Association (CTIA), consistent with Appendix A of the CRADA. The meeting will be open to the public.

Date and Time: The meeting will be held on August 1, 2000, 8:30 a.m. to 5 p.m., and on August 2, 2000, 8:30 a.m. to 11:30 a.m.

Location: 9200 Corporate Blvd., rm 020-B, Rockville, MD 20850.

Contact: Russell Owen, Center for Devices and Radiological Health, Food and Drug Administration (HFZ–114), 12709 Twinbrook Pkwy., Rockville, MD 20857, 301–443–7118, FAX 301–594–6775. Further information about the CRADA is available at http://www.fda.gov/cdrh/ocd/wlessphonecrada.html on the Internet.

Agenda: On August 1, 2000, the working group will hear presentations related to radiofrequency exposure systems and dosimetry and prior reports of micronucleus formation in cells exposed to radiofrequency. On August 2, 2000, the working group will discuss the types of studies needed to further investigate and refine prior reports of micronucleus formation caused by radiofrequency exposure.

Procedure: Interested persons may present data, information, or views on issues to be discussed by the working group. Written submissions may be made to the contact person by July 14, 2000. Oral presentations from the public will be scheduled on August 1, 2000,

between approximately 3 p.m. and 5 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 14, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

If you need special accommodations due to a disability, please contact Ms. Toni Fennell, 301–443–7118 at least 7 days in advance.

Dated: June 29, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–17277 Filed 7–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1350]

Draft Guidance for Industry on Combined Oral Contraceptives—Labeling for Healthcare Providers and Patients; 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 ''Combined Oral Contraceptives—Labeling for Healthcare Providers and Patients.'' FDA's Center for Drug Evaluation and Research is issuing this draft guidance for drug products in the combined oral contraceptives class. When finalized, the guidance should result in uniform labeling among combined oral contraceptive products. Uniform labeling is important to physicians and patients when they read and try to understand efficacy claims and safety risks associated with drug products in this class. In addition, this draft guidance is intended to provide sponsors of new combined oral contraceptive drug products with a labeling template.

DATES: Submit written comments on the draft guidance by September 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 guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lana L. Pauls, Center for Drug Evaluation and Research (HFD–580), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4260.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Combined Oral Contraceptives—Labeling for Healthcare Providers and Patients.'' The draft guidance is intended to produce uniform labeling among combined oral contraceptive products. Uniform labeling is important to physicians and patients in understanding efficacy claims and safety risks associated with drug products in this class. The draft guidance, which outlines recommendations for the physician insert, also includes a labeling template for physician labeling and instructions for use that can be used for new drug applications and abbreviated new drug applications. Among the labeling recommendations is a black box warning explaining the increased risk of serious cardiovascular side effects associated with the concomitant use of cigarettes and combined oral contraceptives. Once the draft guidance is finalized, the recommended text should be included in all approved, pending, and future applications. This labeling guidance is intended to supersede the ''Labeling Guidance for Combination Oral Contraceptives, Physician and Patient Labeling,'' revised in August 1994.

This 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 combined oral contraceptive labeling for healthcare providers and patients. 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 statute, 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: June 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–17278 Filed 7–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Correction

AGENCY: Health Resources and Services Administration.

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** notice of Monday, June 5, 2000, in FR Doc. 00–13951, on page 35657, beginning in the first column under grant category (2) ''Partnership for State Oral Health Leadership Cooperative Agreement (MCHB),'' reference is made to ''Funding Priorities and/or Preferences: A funding preference will be given to institutions of higher learning with extensive experience in early discharge research, linkage with the Secretary's Advisory Committee on Infant Mortality, and published research and recognition in the relevant field.'' This reference was erroneous and should be corrected to read: ''Funding Priorities and/or Preferences: None.''

FOR FURTHER INFORMATION CONTACT: David Heppel, M.D., Director, Division of Child, Adolescent, and Family Health, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–30, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone 1–301–443–2250.

Dated: June 30, 2000.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 00–17279 Filed 7–7–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Proposed Eligibility Criteria for the Centers of Excellence Program in Health Professions Education for Under-represented Minority Individuals

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice requests comments on proposed eligibility criteria for the Center of Excellence (COE) program in health professions education for under-represented minority (URM) individuals. When finalized, these eligibility criteria, will be used to determine the eligibility of designated health professions schools in Fiscal Year 2001. The designated health professions schools are schools of allopathic and osteopathic medicine, dentistry, pharmacy, and graduate programs in behavioral and mental health. The COE program is authorized by section 736 of the Public Health Service Act (the Act) (42 U.S.C. 293).

DATES: Interested persons are invited to comment by August 9, 2000. All comments received on or before August 9, 2000, will be considered in the development of the final eligibility criteria for the COE program. Comments will be addressed individually or by group in the final notice published in the **Federal Register**.

ADDRESSES: All written comments concerning this notice should be submitted to Mario A. Manecci, Acting Director, Division of Health Professions Diversity, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Mario A. Manecci, Acting Director, Division of Health Professions Diversity; telephone (301) 443–2100.

SUPPLEMENTARY INFORMATION:

Purpose

The COE program supports programs of excellence in health professions education for under-represented minority (URM) individuals in designated health professions schools. These designated health professions school COE categories are: certain Historically Black Colleges and Universities, Hispanic, Native American, and other health professions schools that meet the program requirements. The COEs are innovative resource and education centers to recruit, train, and retain URM students and faculty at health professions schools. They carry out activities to improve information resources, clinical education, curricula and cultural competence, focusing on minority health issues. The COEs also focus on facilitating faculty and student research on health issues particularly affecting under-represented minority groups. The ultimate goal of the COE program is to strengthen the national capacity to produce a culturally competent healthcare workforce diversity that represents the U.S. population.

Proposed Eligibility Criteria

The Act requires the designated schools to meet each of four general conditions as part of their eligibility requirements. The schools must: (1) Have a significant number of URM students enrolled; (2) have been effective in assisting its URM students to complete the educational program and receive the attached degree; (3) have been effective in recruiting URM students to enroll in and graduate from the school, including providing financial assistance and encouraging URM students at all levels of education to pursue health professions careers; and (4) have made significant recruitments efforts to increase the number of URM students serving in faculty or administrative positions at the school.

The intent of the COE statute is to identify and support institutions with a commitment to URM's and who have attained, as demonstrated by meeting minimum standards, the expertise in recruiting, teaching, training, and retaining the URM health professional, both as practitioners and as faculty. The proposed criterion is to ascertain that eligible institutions have demonstrated progress in improving the school's information resources, clinical education, and curricula and cultural competence of their graduates with respect to minority health issues. The criteria is to ensure that COE applicants will contribute effectively to the attainment of the HRSA goals of increased diversity in the health care workforce and improving the capacity of designated schools to support programs of excellence in health professions education for URMs. Beginning in FY 2001, the Secretary proposes to establish the following criteria to determine these four eligibility conditions.

A. First Condition

The school must have a significant number of URM students enrolled, including students who have been accepted for enrollment at the school. The Secretary will determine the ''significant number'' for Hispanic and Native American COEs based on a percentage of the current number of URM students enrolled in these schools. This determination is unnecessary, however, for Historically Black Colleges and Universities which meet the ''significant number'' condition by virtue of their definition. With respect to the ''other'' COE health professions schools, the Act requires these schools to have a current enrollment of URMs above the national average.

Given the relatively low number of URMs enrolled in health professions schools, a significant number of URMs would be the number that the Secretary views as a critical mass of URM students. The variation in health professions schools class size and total school enrollment also impacts on the determination of the critical mass of URM students. These figures are as follows:

ALLOPATHIC MEDICINE: TOTAL SCHOOLS = 125

Hispanic Significant Number = 20

There are 39 schools (31%) out of 125 with 20 or more Hispanic students enrolled.

Native American Significant Number = 8

There are 24 schools (20%) out of 125 with 8 or more Native American students enrolled.

OSTEOPATHIC MEDICINE: TOTAL SCHOOLS = 19

Hispanic Significant Number = 20

There are 8 schools (40%) out of 19 with 20 or more Hispanic students enrolled.

Native American Significant Number = 5

There are 6 schools (30%) out of 19 with 5 or more Native American students enrolled.

PHARMACY: TOTAL SCHOOLS = 73

Hispanic Significant Number = 20

There are 10 schools (14%) out of 73 with 20 or more Hispanic students enrolled.

Native American Significant Number = 5

There are 4 schools (6%) out of 73 with 5 or more Native American students enrolled.

DENTISTRY: TOTAL SCHOOLS = 54

Hispanic Significant Number = 20

There are 12 schools (22%) out of 54 with 20 or more Hispanic students enrolled.

Native American Significant Number = 6

There are 2 schools (5%) out of 54 with 6 or more Native American students enrolled.

Behavioral or Mental Health (CLINICAL SOCIAL WORK) = 115

Since there are no current figures available for this category, Schools of Social Work (Direct Services or Clinical Social Work) total URM enrollment will be used as representative of this category.

Hispanic Significant Number = 30

There are 13 schools (11%) out of 115 with 30 or more students enrolled.

Native American Significant Number = None available at this time.

Due to the very limited number of Native Americans enrolled in a Behavioral or Mental Health School/Program, Behavioral or Mental Health graduate programs will be incorporated as part of a consortium with other Native American COEs. The Secretary is authorized to approve a consortium of health profession schools to carry out the purpose of Native American COEs programs.

B. Second Condition

The second condition requires designated health professions schools to assist URMs students to be effective in assisting its URM students to complete the program of education and to receive the attached degree. During the past 6 years, the twenty federally-funded COE programs had an average graduation rate of 93 percent. Accordingly, the Secretary views ''effective'' as a 90% URM graduation rate over a 5-year period.

C. Third Condition

The third condition requires designated health professions schools to have effectively recruited URMs including providing scholarships and other financial assistance for individuals enrolled in the school. One of the major barriers for URMs to enroll in health professions schools is the financial debt burden. The majority of URM students need financial assistance to pursue careers in the health professions. The availability of URM scholarships are limited and most resort to long term loans as the mechanism to pay for their professional education. The debt burden of these outstanding loans after graduation, inhibits URMs from practicing in needy areas where reimbursement is dominated by reduced medicaid payments, and options for junior faculty appointments with limiting starting salaries are not competitive to increase URM faculty in health professions schools. The need for financial assistance is a critical issue for URMs. Accordingly, the proposed COE criteria for ''effective'' recruitment and provision of financial assistance is that the school secures financial assistance in the form of scholarships, tuition waiver, and /or loans for 100% of the URM students who need this aid.

D. Fourth Condition

The fourth condition requires designated health professions schools to have made a significant effort to increase the number of URM faculty or administrative positions at the school. A major COE program focus is to improve the capacity of the school to recruit, train, and retain URM faculty and administrative personnel. Recognizing that institution's faculty and administrative positions may vary from one academic year to another, it would be inappropriate to establish any numerical goal for meeting this condition. However, a health professions school should be able to demonstrate over a 5-year period a ''significant effort'' to recruit URM faculty and administrative positions based on the number of vacancies over this period. The school must provide the Secretary with a description of the school's policies and activities showing how the school has made a ''significant effort'' to increase the number of URM faculty and administrative personnel given the number of vacancies for the last 5-year period.

The catalog of Federal Domestic Assistance Number for the COE program is 93.157. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

These programs are not subject to the Public Health Systems Reporting Requirements.

Dated: July 3, 2000.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

[FR Doc. 00–17322 Filed 7–7–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Bay Mills Indian Community of Michigan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 12.50 acres, more or less, as an addition to the reservation of the Bay Mills Indian Community on June 19, 2000.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Terrance L. Virden, Bureau of Indian Affairs, Director, Office of Trust Responsibilities, MS–4513/MIB/Code 200, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–5831.

SUPPLEMENTARY INFORMATION: A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the tracts of land described below. The land was proclaimed to be an addition to and part of the reservation of the Bay Mills Indian Community for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Reservation of the Bay Mills Indian Community

Chippewa County, Michigan

PARCEL 1

The North 100 feet of the South 430 feet of Government Lot 2, Section 31, Town 47 North, Range 2 West, Superior Township, Chippewa County, Michigan.

PARCEL 2

The South 330 feet of Government Lot 2, Section 31, Town 47 North, Range 2 West, Superior Township, Chippewa County, Michigan. Containing in the aggregate of 5.98 acres of land, more or less.

PARCEL 3

That part of Section 31, Town 47 North, Range 2 West of Government Lot 2, which are particularly described in Exhibit A, as Parcels A, B, C, and D.

EXHIBIT A

Parcel A: Part of Government Lot 2, Section 31, Town 47 North, Range 2 West, described as commencing at the West ¼ corner of said Section 31; thence East along the East and West ¼ line 2640 feet to an iron stake and the point of beginning of this description; thence South 87° 07′ East along the said East and West ¼ line 18 feet, more or less, to the water's edge; thence Southeasterly 270 feet, more or less, along the water's edge to a point; thence South 13° 14′ West 3 feet, more or less, to a point on a traverse line called Point ''C'', said Point ''C'' being North 08° 12′ East 52.09 feet and South 34° 57′ East 334.45 feet from the aforementioned point of beginning; thence continuing South 13° 14′ West 202.23 feet to a point; thence North 77° 08′ West 176.29 feet to a point; thence North 02° 53′ East 380.66 feet to the point of beginning.

Parcel B: Part of Government Lot 2, Section 31, Town 47 North, Range 2 West, described as commencing at the West ¼ corner of said Section 31; thence East along the East and West ¼ line 2640 feet to an iron stake; thence South 02° 53′ West 591.15 feet to an iron stake and the point of beginning; thence North 02° 53′ East 210.49 feet to a point; thence South 77° 08′ East 200 feet to a point; thence South 01° 59′ West 161.71 feet to a point; thence South 88° 50′ West 200 feet to the point of beginning.

Parcel C: Part of Government Lot 2, Section 31, Town 47 North, Range 2 West, described as commencing at the West ¼ corner of said Section 31; thence East along the East and West ¼ line 2640 feet to an iron stake; thence South 02° 53′ West 880.00 feet to an iron stake and the point of beginning; thence North 02° 53′ East 288.85 feet to a point; thence North 88° 50′ East 555.01 feet to a point later referred to in this description as Point ''A''; thence continuing North 88° 50′ East 8 feet, more or less, to the water's edge; thence Southeasterly along the water's edge 346 feet, more or less, to a point; thence North 87° 07′ West 20 feet, more or less, to a point on a traverse line, said point being South 15° 23′ East 345.46 feet from the aforementioned Point ''A''; thence continuing North 87° 07′ West 661.09 feet to the point of beginning.

Parcel D: Part of Government Lot 2, Section 31, Town 47 North, Range 2 West, described as follows: Commencing at the West ¼ corner of said Section 31; thence East along the East and West ¼ line 2640 feet to an iron stake; thence South 02°53′ West 380.66 feet to an iron stake; thence South 77°08′ East 176.29 feet to an iron stake and the point of beginning of this description; thence North 13°14′ East 202.23 feet to a point on a traverse line later referred to in this description as Point ''C''; thence continuing North 13°14′ East, 3 feet more or less to the water's edge; thence Southeasterly 328 feet more or less along the water's edge to a point; thence North 77°08′ West, 9 feet more or less on a point traverse line called Point ''B'', said Point ''B'' being South 34°57′ East 20.13 feet and South 39°17′ East, 307.60 feet from aforementioned Point ''C''; thence continuing North 77°08′ West, 259.11 feet to the point of beginning.

And part of Government Lot 2, Section 31, Town 47 North, Range 2 West described as follows: Commencing at the West ¼ corner of said Section 31, thence East along the East and West ¼ line 2640 feet to an iron stake; thence South 02°53′ West 591.15 feet to an iron stake; thence North 88°50′ East 200 feet to an iron stake and the Point of Beginning of this description; thence North 01°59′ East 161.71 feet to a point; thence South 77°08′ East 235.4 feet to a point later referred to in this description as Point ''B''; thence continuing South 77°08′ East, 9 feet more or less to the water's edge; thence Southeasterly along the water's edge, 155 feet, more or less to a point; thence South 88°50′ West, 8 feet more or less to a point on a traverse line, said point being South 49°37′ East, 157.34 feet from aforementioned Point ''B'', thence continuing South 88°50 West 355.01 feet to the point of beginning.

Together with the right of ingress and egress over gravel driveway across part of Government Lot 2, Section 31, Town 47 North, Range 2 West, described as follows: Commencing at the West ¼ corner of said Section 31; thence East along the East and West ¼ line 2640 feet to an iron stake; thence South 02°53′ West 591.15 feet to an iron stake and the point of beginning of this description; thence North 02°53′ East, 210.49 feet to a point; thence South 77°08′ East 200 feet to a South 88°50′ West 200 feet to the point of beginning of this description. Containing in the aggregate of 6.52 acres of land, more or less. Containing in the aggregate of 6.53 acres of land, more or less.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: June 19, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–17377 Filed 7–7–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–00–1410–00; AA–082237]

Realty Action; FLPMA Section 302 Lease, Knik River Road

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, lease of public land.

SUMMARY: F.K. (Red) Starr (Applicant) has submitted an application for authorization to construct a driveway and parking lot on public lands to be used in conjunction with his commercial recreational river boat business. This land has been examined and found suitable for lease under the provisions of Section 302 of the Federal Land Policy and Management Act of 1976 and regulations at 43 CFR Part 2920.

The land is described as follows:

Seward Meridian, Alaska

Lot 3, Sec. 14, T. 16 N., R. 3 E.

Containing approximately 2 acres.

The subject lands were withdrawn on February 7, 1964, by Public Land Order (PLO) 3324, for use as public recreation area and preservation of public resource values. The subject lands have also been selected by Eklutna, Inc. under section 12 (a) of the Alaska Native Claims Settlement Act (ANCSA). Lands are scheduled for conveyance as early as FY 2001. Upon conveyance of all right, title, and interest under ANCSA, PLO 6590 then revokes PLO 3324 for lands conveyed. Eklutna, Inc. has concurred with the proposed lease.

SUPPLEMENTARY INFORMATION: The Applicant shall reimburse the United States for reasonable administrative fees and for monitoring of construction, operation, maintenance, and rehabilitation of the land authorized. The reimbursement of cost shall be in accordance with the provisions of 43 CFR 2920.6. The lease will be offered for a term of 5 years or 60 days after Eklutna, Inc. receives title to the land, whichever occurs first. The Applicant will be required to pay rent annually at no less than fair market value.

The Applicant has also applied for a Special Recreation Permit.

DATES: Interested parties may submit comments for a period of 45 days from the publication of this Notice to the Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599. In the absence of a timely objection, this proposal shall become the final decision of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Callie Webber, Anchorage Field Office, Bureau of Land Management, 6881 Abbott Loop Road, Anchorage, Alaska, 99507–2599; (907) 267–1272 or (800) 478–1263.

Dated: June 29, 2000.

Nick Douglas,

Field Manager.

[FR Doc. 00–17368 Filed 7–7–00; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES00–28]

Contra Costa Water District's Multi-Purpose Pipeline Project, Contra Costa County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Final Environmental Impact Report/ Final Environmental Impact Statement (FEIR/FEIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and Contra Costa Water District (CCWD or District) prepared a joint FEIR/FEIS for CCWD's Multi-Purpose Pipeline (MPP) Project. The MPP Project would increase the reliability and capacity of the District's raw water delivery system. The MPP Project is being designed not only to remedy immediate canal capacity constraints but also to help meet long-term (year 2020) water demands for raw water, improve firefighting flows following an emergency or natural disaster such as an earthquake, provide an emergency water supply to municipal customers from either the east side or west side of the service area, provide alternate water conveyance capacity to facilitate temporary canal shut-downs and maintenance during low demand periods, increase operational flexibility by providing the capability of delivering water from the west side of the system or the east side of system, and minimize cost and environmental impacts to existing and new customers.

DATES: Reclamation will not make a decision on the proposed action until 30 days after this notice of release of the FEIR/FEIS. After August 10, 2000, the end of the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: Copies of the FEIR/FEIS may be requested from Dr. Gregory Gartrell, Director of Planning, CCWD, 2300 Stanwell Drive, Concord CA 94524; telephone: (925) 688–8100 or Ms. Rossana Riggs, Administrative Secretary, CCWD, 2300 Stanwell Drive, Concord CA 94524; telephone: (925) 688–8147.

Copies of the FEIR/FEIS are available for public inspection and review. These locations are listed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Dr. Gregory Gartrell, CCWD, telephone: (925) 688–8100; or Mr. Robert B. Eckart, Environmental Specialist, Bureau of Reclamation, 2800 Cottage Way, Sacramento CA 95825; telephone: (916) 978–5051.

SUPPLEMENTARY INFORMATION: The proposed action is to implement a Multi-Purpose Pipeline Project to increase the capacity and reliability of the District's raw water delivery system. The District currently transports raw (untreated) water through the Contra Costa Canal, which is owned by Reclamation and, under contract, is operated and maintained by the District. The canal is the District's only raw water conveyance facility; it is vulnerable to damage in an earthquake or other emergency, which could result in extended water shortages. In addition, the canal does not have adequate conveyance capacity to deliver water to meet existing plus projected future demands within the District's service area. The District proposes to increase the capacity and reliability of the raw water delivery system through the construction of the MPP, a Raw Water Pipeline, and ancillary facilities in northern Contra Costa County. The 20-mile MPP would carry treated water from the Randall-Bold Water Treatment Plant in Oakley to the District's Treated Water Service Area. With a capacity of 25 million gallons per day, the MPP would free up capacity in the canal that is currently used to meet customer demands in the Treated Water Service Area. The proposed 4-mile-long Raw Water Pipeline would be constructed to bypass an existing bottleneck along the canal.

CCWD was formed in 1936 under the authority of the State Water Code. CCWD obtains raw water primarily from Reclamation's Contra Costa Canal, an element of the Central Valley Project. CCWD's raw water comes primarily from Rock Slough and Old River, east of Oakley, the source of which is the Sacramento-San Joaquin Delta. The water is pumped the first 7 miles of the Contra Costa Canal and then flows by gravity approximately 20 miles to Mallard Reservoir and Martinez Reservoir. Mallard Reservoir, north of the City of Concord, provides raw water storage for the adjacent Bollman Water Treatment Plant, which supplies potable water to the Treated Water Service Area. Martinez Reservoir provides flow regulation for the Contra Costa Canal.

The FEIR/FEIS (consisting of the DEIR/DEIS and the Response to Comments Document) evaluates in detail two alternatives, one of which is the proposed action, two subalternatives, and a No-Action Alternative. The FEIR/FEIS considers the environmental effects of the these alternatives in all topical areas required under NEPA and CEQA. CCWD and Reclamation have identified the Canal Alignment as the preferred alternative. The MPP Project EIR/EIS focuses on the impacts of pipeline construction and operation, including impacts on land use, traffic, recreation facilities, threatened and endangered species, surface water, and ground water.

Notice of the draft environmental impact report/draft environmental impact statement (DEIR/DEIS) was published in the **Federal Register** on September 10, 1998 (64 FR 3974). A public hearing was held on September 22, 1998. The written comment period closed on November 25, 1998. The Response to Comments Document contains responses to all comments received and changes made to the text of the DEIR/DEIS as a result of those comments.

Locations for Inspecting/Reviewing the FEIR/FEIS

Bureau of Reclamation, Office of Policy, Room 7456, 1849 C Street, NW, Washington DC 20240; telephone: (202) 208–4662

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, at the Denver Federal Center, 6th and Kipling in Denver CO 80225; telephone: (303) 445–2072.
- Bureau of Reclamation, Public Affairs Office, 2800 Cottage Way in Sacramento CA 95825–1898; telephone: (916) 978–5100.

• Contra Costa Water District, Public Reading Room at 1331 Concord Ave in Concord CA 94524; telephone: (925) 688–8312.
• Antioch Branch Library at 501 W. 18th Street in Antioch CA 94509.
• Bay Point Branch Library at 205 Pacifica Avenue in Pittsburg CA 94565.
• Pittsburg Branch Library at 80 Power Avenue in Pittsburg CA 94565.
• Oakley Branch Library at 118 East Ruby in Oakley CA 94561.
• Concord Branch Library at 2900 Salvio in Concord CA 94519.
• Contra Costa County Public Library at 1750 Oak Park Boulevard in Pleasant Hill CA 94523.

Dated: June 28, 2000.

Kirk C. Rodgers,

Deputy Regional Director.

[FR Doc. 00–17376 Filed 7–7–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

United States Parole Commission

Sunshine Act Meeting

Public Announcement

Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10:00 a.m., Wednesday, July 12, 2000.

PLACE: 300 Indiana Avenue, NW., Main Floor, Washington, DC 20001.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Discussion of proposed changes to the Interim Rules and Proposed Rules for District of Columbia Code offenders and Approval of the Proposed Rules as Final Rules.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: July 5, 2000.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 00–17439 Filed 7–6–00; 10:21 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

United States Parole Commission

Sunshine Act Meeting

Public Announcement

Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 3 p.m., Wednesday, July 12, 2000.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately two cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission. (301) 492–5962.

Dated: July 5, 2000.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 00–17440 Filed 7–6–00; 10:21 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,190 and NAFTA–3621]

Tempset, Inc., St. Louis, Missouri; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Tempset, Inc., St. Louis, Missouri. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,190 and NAFTA–3621; Tempset, Inc., St. Louis, Missouri (June 19, 2000)

Signed at Washington, DC this 19th day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17320 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 20, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 20, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 26th day of June, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 6/26/00]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,812	Amway Corp (Wrks)	Ada, MI	06/09/00	Jewelry, Cookware, Foods, Crystal Prod.
37,813	Seton Co (Co)	Saxton, PA	06/05/00	Cut-To-Pattern Leather Pieces.
37,814	Allied Signal (Wrks)	Torrance, CA	06/08/00	Turbo Chargers for Vehicles.
37,815	Tetra Pipe Sales (Wrks)	Midland, TX	06/15/00	Pipeyard-Oil.
37,816	Multiplex Technology, Inc (Co)	Brea, CA	06/13/00	Audio, Video, Data & Telecommunication.
37,817	DHL (Wrks)	Houston, TX	06/14/00	Data Entry Billing.
37,818	Arco Marine, Inc (Wrks)	Long Beach, CA	06/16/00	Transport Oil.
37,819	Modern Engineering Co (Wrks)	Gallman, MS	06/15/00	Welding and Cutting Tips.
37,820	Ametek US Gauge (IAMAW)	Sellersville, PA	06/06/00	Component Parts—Compressed Gas Gages.
37,821	Cross Huller (Wrks)	Sterling Height, MI	06/14/00	Casting Weldments.
37,822	Kalkstein Silk Mills (UNITE)	Paterson, NJ	05/30/00	Silk Polyester Fabric.
37,823	Carleton Woolen Mills (PACE)	Winthrop, ME	06/14/00	Wool Cloth.
37,824	Avian Farms (Wrks)	Waterville, ME	06/12/00	Chickens for the Breeder.
37,825	Georgia Pacific Corp (PACE)	Woodland, ME	06/15/00	2×4's and 2×6's.
37,826	Blastco (Wrks)	Odessa, TX	06/10/00	Plant Demolition.
37,827	Kym Co (The) (Comp)	Jackson, GA	05/15/00	Pants and Shorts.
37,828	Johnstown Corp (USWA)	Johnstown, PA	06/09/00	Steel Castings, Rolling Mill Rolls.
37,829	Bucilla Corp (Wrks)	Hazleton, PA	06/01/00	Handstitched Needlework.
37,830	Grand Haven Brass Foundry (Wrk)	Grand Haven, MI	06/13/00	Plumbing Fixtures.
37,831	Occidental Chemical Corp (Co)	Niagara Falls, NY	06/15/00	Chemicals.

[FR Doc. 00–17305 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,789]

Art Craft Optical Company, Inc., Rochester, New York; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 19, 2000, in response to a petition filed on the same date on behalf of workers at Art Craft Optical Company, Rochester, New York.

The company official who filed the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 19th day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17308 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 20, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 20, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 19th day of June, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 6/19/2000]

TA–W	Subject Firm (Petitioners)	Location	Date of petition	Product(s)
37,789	Art Craft Optical Co. (Co.)	Rochester, NY	05/08/2000	Eye Glass Frames.
37,790	Empire Steel Castings (USWA)	Reading, PA	06/05/2000	Steel Castings.

APPENDIX—Continued

[Petitions instituted on 6/19/2000]

TA–W	Subject Firm (Petitioners)	Location	Date of petition	Product(s)
37,791	Erie Controls (Co.)	Milwaukee, WI	04/25/2000	Electronic Components, Controls Assembly.
37,792	Southwire Company (Wkrs)	Carrollton, GA	05/23/2000	Copper Cathode.
37,793	Data Products (Wkrs)	Simi Valley, CA	06/02/2000	Computer Cartridges.
37,794	American Fabrics (Wkrs)	Tylertown, MS	05/12/2000	Lace.
37,795	Arlington Apparel (Co.)	Arlington, GA	06/02/2000	Ladies and Girls' Underwear.
37,796	Invensys Best Power (Wkrs)	Necedan, WI	06/01/2000	Power Supplies.
37,797	Craft House (Co.)	Kalaska, MI	06/06/2000	Children's Toys and Adult Crafts.
37,798	KPT, Inc. (Wkrs)	Bloomfield, IN	05/31/2000	Ceramic Floor Tile.
37,799	Swann Embroidery (Co.)	Florence, AL	05/31/2000	Embroidered Logos.
37,800	Mar Kel Lighting (IAMAW)	Paris, TN	06/09/2000	Ceramic and Metal Lamps.
37,801	Kountry Kreations (Co.)	Towanda, PA	06/05/2000	Dried & Preserved Floral Products.
37,802	Lydall Westex (Wkrs)	Hamptonville, NC	06/08/2000	Non Woven Heat and Sound Insulation.
37,803	MNCO, LLC (Wkrs)	Commerce, GA	05/23/2000	Leather Aprons, Support & Tool Belts.
37,804	Kellwood Company (UNITE)	Spencer, WV	05/22/2000	Ladies' Knitwear.
37,805	Eastern Tool and Die (Wkrs)	Newington, CT	06/02/2000	Jigs, Fixtures, and Service Tools.
37,806	W.E. Bassett (Co.)	Derby, CT	06/09/2000	Fingernail Clippers and Tweezers.
37,807	Southern Trim, Inc (Co.)	Opp, AL	06/09/2000	Men's and Ladies' Jeans.
37,808	Edgewater Steel Co. (Wkrs)	Oakmont, PA	06/05/2000	Forged Rings, Wheels and Gear Blanks.
37,809	Aly Wear (Wkrs)	Ephrata, PA	06/09/2000	Women's Tops, Bottoms, Dresses.
37,810	Buckeye Apparel (UNITE)	Coldwater, OH	06/02/2000	Men's Pants and Swimwear.
37,811A	Portland General Electric (Co.)	Portland, OR	06/19/2000	Decommissioning Nuclear Power Plant.
37,811	Portland General Electric (Co.)	Rainier, OR	06/19/2000	Decommissioning Nuclear Power Plant.

[FR Doc. 00–17313 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,841]

Black Warrior Wireline Corp., Boone Wireline Co., Inc., Odessa, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 10, 1998 applicable to workers of Black Warrior Wireline Corp. located in Odessa, Texas. The notice was published in the **Federal Register** on September 28, 2998 (63 FR 51605).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in occupations related to the production of crude oil and natural gas. New information shows that Boone Wireline Co., Inc. is a wholly owned subsidiary of Black Warrior Wireline Corp. located in Odessa, Texas. The company also reports that workers separated from employment at Black Warrior had their wages reported under a separate unemployment insurance (UI) tax account for Boone Wireline Co., Inc. also located in Odessa, Texas. Based on these findings, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Black Warrior Wireline Corp. who were adversely affected by increased imports.

The amended notice applicable to TA–W–34,841 is hereby issued as follows:

''All workers of Black Warrior Wireline Corp., Boone Wireline Co., Inc., Odessa, Texas who became totally or partially separated from employment on or after July 22, 1997 through September 10, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 22nd day of June, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–17314 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,547 and TA–W–37,547A]

Donnkenny Apparel, Inc., Floyd, Virginia and Donnkenny Apparel, Inc., Independence, Virginia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 6, 2000, applicable to workers of Donnkenny Apparel, Inc., Floyd and Independence, Virginia. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce ladies' sportswear (pants and skirts). New information shows that the Department inadvertently included the workers of the Floyd, Virginia location of Donnkenny Apparel in its certification. Findings show that a previous certification, TA–W–34,806B, was issued on October 22, 1998, covering the same worker group, who were engaged in employment related to the production of ladies' sportswear (pants and skirts). That certification expires October 22, 2000.

Based on these findings, the Department is amending the certification to limit coverage to only workers of Donnkenny Apparel, Inc., Independence, Virginia.

The intent of the Department's certification is in include all workers of Donnkenny Apparel, Inc., Independence, Virginia adversely affected by increased imports.

The amended notice applicable to TA–W–37,547 is hereby issued as follows:

All workers of Konnkenny Apparel, Inc., Independence, Virginia who became totally or partially separated from employment on or after March 16, 1999 through June 6, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 23rd day of June, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–17312 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,619]

Furniture Crafters, Grants Pass, Oregon; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 24, 2000, in response to a worker petition which was filed on the same date on behalf of workers at Furniture Crafters Grants Pass, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 9th day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17317 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,734]

Glacier Gold Compost, Incorporated, Olney, Montana; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 30, 2000, in response to a petition filed on the same date on behalf of workers at Glacier Gold Compost, Incorporated, Olney, Montana.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 5th day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17316 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,682]

Johnson Controls, Incorporated, Goshen, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 15, 2000, in response to a petition filed by a company official on behalf of workers at Johnson Controls, Incorporated, Goshen, Indiana.

The company official and union official submitting the petition have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 12th day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17319 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,778]

Shepherd Operating, Inc., Midland, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 12, 2000 in response to a petition filed by a company official on behalf of workers at Shepherd Operating, Inc., Midland, Texas.

The workers of the subject facility were separated from the subject firm more than one year prior to the date of the petition. In accordance with section 223(b)(1) of the Trade Act of 1974, no certification may apply to any worker whose last total or partial separation occurred more than one year before the date of the petition. The date of the petition is June 2, 2000, and the company closed March 31, 1999. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC., this 23rd day of June, 2000.

Edward A. Tomchick,

Program Management, Division of Trade Adjustment Assistance.

[FR Doc. 00–17307 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—03972]

Ametek U.S. Gauge Division, Sellersville, Pennsylvania; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on June 12, 2000 in response to a petition filed by the International Association of Machinists and Aerospace Workers on behalf of workers and former workers at Ametek U.S. Gauge, U.S. Division, Sellersville, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would

serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of June 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–17309 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03876]

Chavez Signs, Incorporated, El Paso, Texas; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on May 1, 2000 in response to a petition filed on behalf of workers at Johnson Controls, Incorporated, Goshen, Georgia.

In a letter dated June 5, 2000, the petitioners requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 13th day of June 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17318 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–003869]

Cooper Energy Services, C–B Reciprocating Products Division, Grove City, Pennsylvania; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on April 27, 2000, in response to a petition filed on behalf of workers at Cooper Energy Services, C–B Reciprocating Products, Grove City, Pennsylvania. Cooper Energy Services is a division of Cooper Cameron Corporation. Workers produced cast and ductile iron castings.

The Department has determined upon reconsideration that the worker group for which the petition was filed is eligible to apply for transitional adjustment assistance (NAFTA–003527). Due to the foregoing determination, an active certification exists for these workers. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 30th day of June 2000.

Edward A. Tomchick,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17311 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03952]

Invensys Best Power, Necedah, Wisconsin; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on June 2, 2000, in response to a petition filed on behalf of workers at Invensys Best Power, Necedah, Wisconsin.

In a statement dated June 26, 2000, an employee submitting the petition requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 29th day of June, 2000.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–17310 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03927]

Mediacopy; San Leandro, CA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on May 22, 2000 in response to a petition filed on behalf of workers at Mediacopy.

In a letter dated June 27, 2000, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC., this 30th day of June 2000.

Edward A. Tomchick,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17306 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–003894]

Southland Manufacturing Company Incorporated, Ashland, Alabama; Notice of Termination

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–1 concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on May 8, 2000, in response to a petition filed on behalf of workers at Southland Manufacturing Company, Inc., Ashland, Alabama. Workers produce men's slacks.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation has been terminated.

A Trade Adjustment Assistance investigation (TA–W–37, 719) to determine worker eligibility for benefits under the Trade Act of 1974, was instituted on May 30, 2000. A

determination should be made within sixty (60) days of the institution date.

Signed in Washington, D.C., this 19th day of June 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–17315 Filed 7–7–00; 8:45 am]

BILLING CODE 4510–30–M

MARINE MAMMAL COMMISSION

Sunshine Act Meeting

TIME AND DATES: The Marine Mammal Commission will meet in executive session on July 10, 2000.

PLACE: 901 17th Street, N.W., Washington, D.C. 20006

SUBJECT MATTER AND STATUS: This meeting of the Marine Mammal Commission will consider candidates for the position of Executive Director of the Commission and, as provided for in subsection (c)(2) and (c)(6) of the Government in the Sunshine Act, will be closed to the public.

FOR FURTHER INFORMATION CONTACT: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 905, Bethesda, MD 20814, 301/504–0087.

Dated: July 6, 2000.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 00–17517 Filed 7–6–00; 3:00 pm]

BILLING CODE 6820–31–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–076)]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee, Goals Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Goals Subcommittee.

DATES: Monday, August 14, 2000, 8:30 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 9H40, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4729).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of the Revised Office of Aerospace Technology (OAT) Goals & Objectives
—Planning for the Aerospace Transportation System After Next
—Analysis of the OAT FY 00 Progress Towards the Goals
—Strategy for the FY 01 Review of Progress Towards the Goals

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: July 3, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–17303 Filed 7–7–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–77)]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee.

DATES: Tuesday, August 15, 2000, 8:30 a.m. to 5:00 p.m.; and Wednesday, August 16, 2000, 8:00 a.m. to 12:00 Noon.

ADDRESSES: National Aeronautics and Space Administration, Room 6H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4729).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status of Aerospace Technology Programs
—Revolutionary Concepts (REVCON)
—Status of National R&D Investment Plan for ''Aviation Systems After Next''
—Integrated Presentation on NASA's Aviation Safety Program
—Government Performance Results Act (GPRA) Status
—National Transonic Facility (NTF)
—Subcommittee Reports

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: July 3, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–17304 Filed 7–7–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting; Quarterly Meeting.

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability, Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

QUARTERLY MEETING DATES: August 7–9, 2000, 8:30 a.m. to 5:00 p.m.

LOCATION: Wyndham City Center Hotel, 1143 New Hampshire Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

AGENCY MISSION: The National Council on disability is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on disability prior to this meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of the National Council on Disability will be open to the public.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Executive Session (closed)
Unfinished Business
New Business
Announcements
Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on July 6, 2000.

Ethel D. Briggs,

Executive Director.

[FR Doc. 00–17499 Filed 7–6–00; 2:12 pm]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–20563; ASLBP No. 00–779–01–CivP]

Western Soil, Inc.,Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register,** 37 FR 28,710 (1972), and §§ Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding: Western Soil, Inc., Order Imposing Civil Monetary Penalty.

This Board is being established pursuant to the request of Western Soil, Inc., for a hearing regarding an Order issued by the Director, Office of Enforcement, dated April 12, 2000, entitled ''Order Imposing Civil Monetary Penalty'' (65 FR 21,489 (Apr. 21, 2000)).

The Board is comprised of the following administrative judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001
G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001
Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR § 2.701.

Issued at Rockville, Maryland, this 3rd day of July 2000.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 00–17341 Filed 7–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–170]

Armed Forces Radiobiology Research Institute; Nuclear Research Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Facility Operating License No. R–84, issued to Armed Forces Radiobiology Research Institute (the licensee) for operation of their research reactor.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow extension of the license expiration time from November 8, 2000, to August 1, 2004, for the Armed Forces Radiobiology Research Institute Research Reactor. The proposed action is in accordance with the licensee's application for amendment dated February 28, 2000. The licensee submitted an Environmental Report with its request for license extension.

Need for the Proposed Action

The proposed action is needed to allow continued operation of the Armed Forces Radiobiology Research Institute Research Reactor in order to continue training, radiobiology research, and activation analysis activities beyond the current term of the license.

Environmental Impact of the Proposed Action

The Armed Forces Radiobiology Research Institute Research Reactor is located near the center of the National Naval Medical Center in Bethesda, Maryland in a metal and concrete building.

The Armed Forces Radiobiology Research Institute Research Reactor is a moderate power (1 megawatt), pool-type research reactor. The NRC licensed the facility in 1962 and the facility license was renewed in 1984. Since about 1981, the facility has operated about 28.8 megawatt-hours per year on average. During that time, the gaseous Argon-41 radiological release has been on average of 3.236×10^9 becquerel per year (8.747 curies per year). Since 1981, the facility has had no radiological liquid releases. Solid releases of radioactive material have been transferred and disposed of in accordance with the requirements of the licensee's byproduct license. Currently, there are no plans to change any operating characteristics of the reactor during the license extension period.

The NRC concludes that the radiological effects of the continued operation will be minimal based on past radiological releases. The radiological exposures for facility operations have been within regulatory limits. Conditions are not expected to change.

As for potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological effluents and has no other environmental impact. Therefore, no significant non-radiological environmental impacts associated with the proposed action.

In addition, the environmental impact associated with operation of research reactors has been generically evaluated by the staff and is discussed in the attached generic evaluation. This evaluation concludes that no significant environmental impact is associated with the operation of research reactors licensed to operate at power levels up to and including 2 megawatts thermal. We have determined that this generic evaluation is applicable to operation of the Armed Forces Radiobiology Research Institute Research Reactor and that there are no special or unique features that would preclude reliance on the generic evaluation.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. The proposed action will not 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.

Alternatives to the Proposed Action

An alternative to the proposed action for the research reactor facility is to deny the application (*i.e.,* ''no action'' alternative). If the application is denied, the licensee has indicated that it would apply for license renewal and operate under the timely renewal provisions of 10 CFR 2.109 until the NRC renewed or denied the license renewal application. With operation under timely renewal or renewal, the actual conditions of the reactor would not change. If the NRC denied license renewal, Armed Forces Radiobiology Research Institute Research Reactor operations would stop and decommissioning would be required with a likely small impact on the environment. The environmental impacts of the proposed action and alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Environmental Assessment prepared for the renewal of Armed Forces Radiobiology Research Institute's license in January 1985.

Agencies and Persons Contacted

On May 8, 2000, the staff consulted with the Maryland Department of Natural Resources Official, Rich McLean, regarding the environmental impact of the proposed action. Mr. McLean also contacted and coordinated review with Roland Fletcher, Manager Radiological Health Program, Air and Radiation Management Administration, Maryland Department of the Environment. The State officials had no comment.

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 February 28, 2000. A hard copy is available for public inspection at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. Publicly available records will also 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 June 2000.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Chief, Events Assessment, Generic Communications, and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

Environmental Considerations Regarding the Licensing of Research Reactors and Critical Facilities

Introduction

This discussion deals with research reactors and critical facilities which are designed to operate at low power levels, 2 MWt and lower, and are used primarily for basic research in neutron physics, neutron radiography, isotope production, experiments associated with nuclear engineering, training and as a part of a nuclear physics curriculum. Operation of such facilities will generally not exceed a 5-day week, 8-hour day, or about 2000 hours per year. Such reactors are located adjacent to technical service support facilities with convenient access for students and faculty.

Sited most frequently on the campuses of large universities, the reactors are usually housed in already existing structures, appropriately modified, or placed in new buildings that are designed and constructed to blend in with existing facilities. However, the environmental considerations discussed herein are not limited to those which are part of universities.

Facility

There are no exterior conduits, pipelines, electrical or mechanical structures or transmission lines attached to or adjacent to the facility other than for utility services, which are similar to those required in other similar facilities, specifically laboratories. Heat dissipation is generally accomplished by use of a cooling tower located on the roof of the building. These cooling towers typically are on the order of 10′ x 10′ x 10′ and are comparable to cooling towers associated with the air-conditioning systems of large office buildings.

Make-up for the cooling system is readily available and usually obtained from the local water supply. Radioactive gaseous effluents are limited to Ar-41 and the release of radioactive liquid effluents can be carefully monitored and controlled. Liquid wastes are collected in storage tanks to allow for decay and monitoring prior to dilution and release to the sanitary sewer system. Solid radioactive wastes are packaged and shipped offsite for storage at NRC-approved sites. The transportation of such waste is done in accordance with existing NRC–DOT regulations in approved shipping containers.

Chemical and sanitary waste systems are similar to those existing at other similar laboratories and buildings.

Environmental Effects of Site Preparation and Facility Construction

Construction of such facilities invariably occurs in areas that have already been disturbed by other building construction and, in some cases, solely within an already existing building. Therefore, construction would not be expected to have any significant effect on the terrain, vegetation, wildlife or nearby waters or aquatic life. The societal, economic and aesthetic impacts of construction would be no greater than those associated with the construction of a large office building or similar research facility.

Environmental Effects of Facility Operation

Release of thermal effluents from a reactor of less than 2 MWt will not have a significant effect on the environment. This small amount of waste heat is generally rejected to the atmosphere by means of small cooling towers. Extensive drift and/or fog will not occur at this low power level.

Release of routine gaseous effluents can be limited to Ar-41, which is generated by neutron activation of air. Even this will be kept as low as practicable by using gases other than air for supporting experiments. Yearly doses to un-restricted areas will be at or below established guidelines in 10 CFR Part 20 limits. Routine releases of radioactive liquid effluents can be carefully monitored and controlled in a manner that will ensure compliance with current standards. Solid radioactive wastes will be shipped to an authorized disposal site in approved containers. These wastes should not require more than a few shipping containers a year.

Based on experience with other research reactors, specifically TRIGA reactors operating in the 1 to 2 MWt range, the annual release of gaseous and liquid effluents to unrestricted areas should be less than 30 curies and 0.01 curies, respectively.

No release of potentially harmful chemical substances will occur during normal operation. Small amounts of chemicals and/or high-solid content water may be released from the facility through the sanitary sewer during periodic blowdown of the cooling tower or from laboratory experiments.

Other potential effects of the facility, such as aesthetics, noise, societal or

impact on local flora and fauna are expected to be too small to measure.

Environmental Effects of Accidents

Accidents ranging from the failure of experiments up to the largest core damage and fission product release considered possible result in doses that are less than 10 CFR Part 20 guidelines and are considered negligible with respect to the environment.

Unavoidable Effects of Facility Construction and Operation

The unavoidable effects of construction and operation involve the materials used in construction that cannot be recovered and the fissionable material used in the reactor. No adverse impact on the environment is expected from either of these unavoidable effects.

Alternatives to Construction and Operation of the Facility

To accomplish the objectives associated with research reactors, there are no suitable alternatives. Some of these objectives are training of students in the operation of reactors, production of radioisotopes, and use of neutron and gamma ray beams to conduct experiments.

Long-Term Effects of Facility Construction and Operation

The long-term effects of research facilities are considered to be beneficial as a result of the contribution to scientific knowledge and training. Because of the relatively small amount of capital resources involved and the small impact on the environment, very little irreversible and irretrievable commitment is associated with such facilities.

Costs and Benefits of Facility Alternatives

The costs are on the order of several millions of dollars with very little environmental impact. The benefits include, but are not limited to, some combination of the following: conduct of activation analyses, conduct of neutron radiography, training of operating personnel, and education of students. Some of these activities could be conducted using particle accelerators or radioactive sources which would be more costly and less efficient. There is no reasonable alternative to a nuclear research reactor for conducting this spectrum of activities.

Conclusion

The staff concludes that there will be no significant environmental impact associated with the licensing of research reactors or critical facilities designed to operate at power levels of 2 MWt or lower and that no environmental impact statements are required to be written for the issuance of construction permits or operating licenses for such facilities.

[FR Doc. 00–17344 Filed 7–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27]

Consideration of License Amendment Request for BWX Technologies, Inc., and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Environmental Assessment and Finding of No Significant Impact and Opportunity to Request a Hearing on Amendment of Materials License SNM–42, BWX Technologies, Inc.

SUMMARY: The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–42 to exempt BWX Technologies, Inc. from the beryllium-to-fissile mass ratio limit specified in the fissile material exemption standards of 10 CFR 71.53.

Environmental Assessment

1.0 Introduction

1.1 Background

The Nuclear Regulatory Commission (NRC) staff has evaluated the environmental impacts of the exemption of BWX Technologies, Inc. (BWXT) from the beryllium-to-fissile mass ratio limits specified in the fissile material exemption standards of 10 CFR 71.53 . This Environmental Assessment (EA) has been prepared pursuant to the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) and NRC regulations (10 CFR part 51) which implement the requirements of the National Environmental Policy Act (NEPA) of 1969. The purpose of this document is to assess the environmental consequences of the proposed license amendment.

The BWXT facility in Lynchburg, VA is authorized under SNM–42 to possess nuclear materials for the fabrication and assembly of nuclear fuel components. The facility supports the U.S. naval reactor program, fabricates research and university reactor components, and manufactures compact reactor fuel elements. The facility also performs recovery of scrap uranium. Research and development activities related to the fabrication of nuclear fuel components are also conducted.

1.2 Review Scope

In accordance with 10 CFR part 51, this EA (1) presents information and analysis for determining whether to issue a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS); (2) fulfills the NRC's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary; and (3) facilitates preparation of an EIS if one is necessary. Should the NRC issue a FONSI, no EIS would be prepared and the license amendment would be granted.

1.3 Proposed Action

The proposed action is to amend NRC Materials License SNM–42 to exempt the licensee from the beryllium-to-fissile mass ratio limit specified in the fissile material exemption standards of 10 CFR 71.53.

1.4 Need for Proposed Action

The proposed action would allow the licensee to transport uranium-beryllium waste with fission and activation products under the requirements of 10 CFR part 71. The licensee may use the fissile material exemption specified in 10 CFR 71.53 with an exemption to the 0.1 percent beryllium-to-fissile mass ratio limit.

The provisions of 10 CFR 71.53 exempt the shipment of material with limited fissile mass from the fissile material package standards in 10 CFR 71.55 and 71.59. The fissile material exemption in 10 CFR 71.53 is only valid for materials that contain a mass of beryllium that is less than 0.1 percent of the mass of fissile material. BWXT has identified waste material with a limited amount of fissile material, but with beryllium quantities that exceed the 0.1 percent beryllium-to-fissile mass ratio limit. BWXT needs to ship these wastes, which consist of large physical objects (*e.g.,* ductwork). BWXT does not want to ship the waste in transportation packages that are approved by the NRC because the waste materials would require significant cutting and processing that would increase the risk of beryllium exposure to personnel. The uranium and beryllium content of the waste objects is in the form of surface contamination. Both uranium and beryllium contamination levels are expected to be relatively low. The NRC staff has determined that the shipments by BWXT would be nuclearly safe with certain license conditions applied; however, given there is no uranium level below which the 0.1 percent beryllium to uranium ratio does not

apply, this material can not be classified as fissile exempt under the current regulation.

1.5 Alternatives

The alternatives available to the NRC are:

1. Approve the license amendment request as submitted; or
2. Deny the amendment request.

2.0 Affected Environment

The affected environment for Alternative 1 would be the immediate vicinity of the vehicle used to transport the material to a licensed disposal facility.

The affected environment for Alternative 2 is the BWXT site. A full description of the site and its characteristics is given in the 1995 Environmental Assessment for the Renewal of the NRC license for BWXT. The BWXT facility is located on a 525 acre (2 km^2) site in the northeastern corner of Campbell County, approximately 5 miles (8km) east of Lynchburg, Virginia. This site is located in a generally rural area, consisting primarily of rolling hills with gentle slopes, farm land, and woodlands. The Navy Nuclear Fuel Division (NNFD) facility is centrally located on the site with the main manufacturing complex contained in a 19 acre (0.08 km^2) fenced area.

3.0 Effluent Releases and Monitoring

Alternative 1: No changes to the effluents and monitoring program are expected as a result of approving this amendment request.

Alternative 2: No changes to the effluents and monitoring program are expected as a result of denying this amendment request. The licensee would construct a containment area to process and repackage the waste material. This containment area would effectively prevent the release of waste material to the environment.

4.0 Environmental Impacts of Proposed Action and Alternatives

4.1 Public Health

Alternative 1: The risk to human health from the transportation of all radioactive material in the U.S. was evaluated in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). The principal radiological environmental impact during normal transportation is direct radiation exposure to nearby persons from radioactive material in the package. The average annual individual dose from all radioactive material transportation in the U.S. was calculated to be approximately 0.5 mrem, well below the 10 CFR part 20 requirement of 100 mrem for a member of the public.

Occupational health was also considered in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). The average annual occupational dose to the driver(s) is estimated to be 8.7 mSv (870 mrem), which is below the 10 CFR part 20 requirement of 50 mSv (5000 mrem). The Department of Transportation (DOT) regulations in 49 CFR 177.842(g) require that the radiation dose may not exceed 0.02 mSv (2 mrem) per hour in any position normally occupied in a motor vehicle. Shipment of these materials would not affect the assessment of environmental impacts or the conclusions in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977).

Alternative 2: The risk to the public health is not expected to increase as a result of denying this amendment request, under normal operating conditions. The licensee already has controls in place to prevent the migration of material off-site.

The occupational health impacts associated with the denial of this amendment request were evaluated. The material to be shipped is currently packaged and stored in containers which are not approved by the NRC. In order to ship the material in NRC-approved packages, the material will need to be processed and repackaged. The licensee would need to construct a containment area in order to limit personnel exposure to airborne beryllium. Actions would be taken to control occupational exposure such as limited exposure times, bioassays, and respirator use. The risk for worker exposure to uranium and beryllium would increase as a result of denying this amendment request.

4.2 Water Resources

Alternative 1: The NRC staff has determined that the proposed amendment will not impact the quality of water resources as a result of normal transport.

Alternative 2: The NRC staff has determined that denial of the proposed amendment request will not impact the quality of water resources at or near the BWXT site.

4.3 Geology, Soils, Air Quality, Demography, Biota, Cultural and Historic Resources

Alternative 1: The NRC staff has determined that the proposed amendment will not impact geology, soils, air quality, demography, biota, or cultural or historic resources under normal transport conditions.

Alternative 2: The NRC staff has determined that denial of the proposed amendment will not impact geology, soils, air quality, demography, biota, or cultural or historic resources at or near the BWXT site.

4.4 Alternatives

The action that the NRC is considering is approval of an amendment request to a Materials license issued pursuant to 10 CFR part 70. The proposed action is to amend NRC Materials License SNM–42 to exempt the licensee from the beryllium-to-fissile mass ratio limit specified in the fissile material exemption standards of 10 CFR 71.53. The alternatives available to the NRC are:

1. Approve the license amendment request as submitted; or
2. Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant denial of the license amendment. In addition, the denial of the amendment request would require the licensee to ship the waste in packages approved by the NRC, thereby increasing the risk of beryllium exposure to personnel due to significant cutting and processing. The staff considers that Alternative 1 is the appropriate alternative for selection.

5.0 Agencies and Persons Contacted

The NRC contacted a representative from the Virginia Department of Health in correspondence dated May 25, 2000.

6.0 References

U.S. Nuclear Regulatory Commission (NRC), December 1977, ''Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes.'' U.S. Nuclear Regulatory Commission (NRC), August 1995, ''Environmental Assessment for Renewal of Special Nuclear Material License SNM–42.''

7.0 Conclusions

Based on an evaluation of the environmental impacts of the amendment request, the NRC has determined that the proper action is to issue a FONSI in the **Federal Register**. The NRC staff considered the environmental consequences of exempting the licensee from the beryllium-to-fissile mass ratio limit specified in the fissile material exemption standards in 10 CFR 71.53, and have determined that the approval

of this exemption will have no adverse effect on public health and safety or the environment.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License SNM–42. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, the Commission is making a Finding of No Significant Impact.

The Environmental Assessment and the documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

Opportunity for a Hearing

Based on the Environmental Assessment and Finding of No Significant Impact, and a staff safety evaluation to be completed, NRC is preparing to amend License SNM–42. The NRC hereby provides that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. 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(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission either:

1. By delivery to the Rulemakings and Adjudications Staff of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h).

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR Section 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, BWX Technologies, P.O. Box 785, Lynchburg, VA; and

2. The NRC staff, by delivering it 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, DC 20555.

The NRC contact for this licensing action is Thomas Cox. Mr. Cox may be contacted at (301) 415–8107 or by e-mail at THC@nrc.gov for more information about this licensing action.

Dated at Rockville, Maryland, this 3rd day of July, 2000.

For the Nuclear Regulatory Commission.

Philip Ting,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–17342 Filed 7–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–206]

Southern California Edison, San Onofre Nuclear Generating Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of 10 CFR part 73 for Facility Operating License No. DPR–13, issued to Southern California Edison, (the licensee), for the San Onofre Nuclear Generating Station, Unit 1, a permanently shutdown nuclear reactor facility located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would modify security requirements to eliminate certain equipment, to relocate certain equipment, to modify certain procedures, and reduce the number of armed responders, due to the permanently shutdown and defueled status of the San Onofre Nuclear Generating Station, Unit 1.

The proposed action is in accordance with the licensee's application for exemption dated April 28, 2000. The requested action would grant an exemption from certain requirements of 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' specifically from 10 CFR 73.55(a), (c)(1), (c)(3), (c)(4), (c)(5), (c)(6), (c)(7), (d)(1), (e)(1), (e)(2), (h)(3) and (h)(6) as identified in the licensee's application for exemption dated April 28, 2000.

The Need for the Proposed Action

San Onofre Nuclear Generating Station Unit 1 was permanently shut down on November 20, 1992. The reactor was permanently defueled and the possession-only license became effective on March 9, 1993. In this permanently shutdown condition, the facility poses a reduced risk to public health and safety. Because of this reduced risk, certain requirements of 10 CFR 73.55 are no longer appropriate. An exemption is required from portions of 10 CFR 73.55 to allow the licensee to implement a revised security plan that is appropriate for the permanently shutdown and defueled reactor facility.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that granting an exemption to those portions of 10 CFR 73.55 identified above would not have a significant impact on the environment. Unit 1 has not operated since November 1992. As demonstrated by the licensee in its exemption application, the consequences of any possible act of sabotage are thus reduced, due to the reduced amount of radioactive material available for possible release from the Unit 1 spent fuel pool.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there

are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the San Onofre Nuclear Generating Station, Unit 1.

Agencies and Persons Contacted

In accordance with its stated policy, on May 31, 2000, the staff consulted with the State of California official, Mr. Steven Hsu of the Radiologic Health Services, State Department of Health Services, 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 April 28, 2000 (Accession No. ML003709607), 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 3rd day of July 2000.

For the Nuclear Regulatory Commission.

David J. Wrona,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–17343 Filed 7–7–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rules 1(a), 1(b), Forms U5A and U5B—SEC File No. 270–168—OMB Control No. 3235–0170

Rule 3, Form U–3A3–1—SEC File No. 270–77—OMB Control No. 3235–0160

Rule 26—SEC File No. 270–78—OMB Control No. 3235–0183

Rule 44—SEC File No. 270–162—OMB Control No. 3235–0147

Rule 62, Form U–R–1—SEC File No. 270–166—OMB Control No. 3235–0152

Rule 88, Form U–13–1—SEC File No. 270–80—OMB Control No. 3235–0182

Rule 95, Form U–13E–1—SEC File No. 270–74—OMB Control No. 3235–0162

Form U–7D—SEC File No. 270–75—OMB Control No. 3235–0165

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission (''Commission'') requests comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rules 1(a) and 1(b) [17 CFR 250.1(a), 250.1(b)] and forms U5A and U5B [17 CFR 259.5a, 259.5b] implement Sections 5(a) and 5(b) of the Public Utility Holding Company Act of 1935, as amended (''Act'') which require any holding company or any person proposing to become a holding company to file with the Commission a notification of registration and registration statement, respectively. The information is necessary for the Commission to determine whether a new registrant is in compliance with the requirements of the Act. The initial burden of this requirement is approximately 80 hours per respondent. Thereafter there is no annual burden. The Commission has been receiving four filings each year, with a total annual burden of 320 hours. Companies filing under this rule are required to retain records for a period of 10 years, and provision of the information is mandatory. The retention time period allows the Commission the opportunity to perform its audit functions. Responses are not kept confidential.

Rule 3 [17 CFR 250.3] permits a bank that is also a public utility holding company to claim an exemption from the requirements of the Act, through the submission of an annual statement on Form U–3A3–1 [17 CFR 259.403]. The rule and the form are used by the Commission staff to expedite its review of compliance with Section 3(a)(4) of the Act. Rule 3 and form U–3A3–1 permit a bank that is also a public utility holding company to avoid the burdens associated with an application for an exemption from the requirements of the Act. An application for an exemption would involve a formal order, which might require an administrative hearing and which otherwise would consume a significant amount of Commission resources. Each year the Commission receives five submissions from banks, each takes about two hours to complete. Thus a total annual burden of ten hours is imposed. Provision of this information is required. Banks that file under this rule are required to retain records for a period of ten years. This retention period is consistent with requirements imposed by federal agencies that regulate banks. Banks are allowed to request confidential treatment of information filed under this rule.

Rule 26 [17 CFR 250.26] sets forth the financial statement and recordkeeping requirements for registered holding companies and their subsidiaries. This information collection is of fundamental importance to the Commission in the review of financial statements of registered public utility holding companies. The Commission reviews financial statements in connection with its review of proposals submitted for approval under several provisions of the Act. Provision of this information is required. The rule imposes no annual burden because there is no form, as such, under Rule 26 and because the information is required for Form U5S, which is subject to separate OMB review. In addition, there is no requirement for record retention under this rule.

Rule 44 [17 CFR 250.44] prohibits sales of utility securities or of utility assets owned by registered public utility holding companies, not otherwise exempt under Commission regulations, except under a declaration that notifies the Commission of the proposed sale and that becomes effective. The information is essential to Commission administration of Section 12(d) of the Act and is not otherwise available. The Commission analyzes the information to determine if the proposed sale is consistent with the public interest. Provision of this information is

required. The rule imposes a burden of about 96 hours each year on 4 respondents, each of which makes one submission. There is no requirement for record retention under this rule. Submissions are not kept confidential.

Rule 62 [17 CFR 250.62] prohibits the solicitation of authorization regarding any security of a regulated company in connection with reorganization subject to Commission approval or regarding any transaction which is the subject of an application or declaration, except under a declaration regarding the solicitation which has become effective. The information is necessary to permit the Commission to adequately enforce Sections 12(e) and 11(g) of the Act. The rule and Form U–R–1 [17 CFR 259.221] impose a total annual burden of 35 hours on 7 companies, who each spend 5 hours, and file as necessary.

Rule 88 [17 CFR 250.88] requires the filing of Form U–13–1 [17 CFR 259.113] for a mutual or subsidiary service company performing services for affiliate companies of a holding company system. Twenty-two respondents initially spend a total of approximately eighty-eight hours meeting this requirement. Thereafter, there is no annual burden. Service companies filing under this rule are required to retain records for a period of 10 years, and provision of the information is mandatory. The retention time period allows the Commission the opportunity to perform its audit functions. Responses are not kept confidential.

Rule 95 [17 CFR 250.95] requires service companies to file reports on Form U–13E–1 [17 CFR 259.213] with the Commission prior to their performance of contracts for registered holding companies or their subsidiaries, for services, construction, or sales of goods. The Commission requires this information to enforce the provisions of Section 13(e) and of Section 13(f) of the Act. The enforcement of these statutes would be compromised without the collection of this information, which is not available from other sources. Provision of this information is required. Companies that file under this rule are required to retain records for a period of six years. This retention period allows the Commission to perform its audit functions. One company meets this requirement on an annual basis with an estimated average burden of 2 hours. This information is not kept confidential.

Form U–7D [17 CFR 259.404] establishes the filing company's right to the exemption authorized for financing entities holding title to utility assets leased to a utility company. The information is necessary for the Commission to determine whether a company is exempt from, or governed by, the Act. The form imposes a total annual burden of 72 hours on 24 respondents, who each spend 3 hours annually preparing and filing 1 response. Companies filing under this rule are required to retain records for a period of 10 years, and provision of the information is mandatory. The retention time period allows the Commission the opportunity to perform its audit functions, and generally coincides with companies' obligation period under their respective leases. Responses are not kept confidential.

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

It should be noted that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: June 28, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17329 Filed 7–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27195]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 30, 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 July 25, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 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 July 25, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70–9625)

Allegheny Energy, Inc. (''Allegheny''), 10435 Downsville Pike, Hagerstown, Maryland 21470, a registered public utility holding company, Monongahela Power Company (''Monongahela Power''), 1310 Fairmont Avenue, Fairmont, West Virginia 23219, a wholly owned combination gas and electric utility subsidiary of Allegheny and Mountaineer Gas Company (''Mountaineer Gas''), 414 Summers Street, Charleston, West Virginia 25301, an indirectly owned gas utility subsidiary of Energy Corporation of America (''ECA''), a Colorado public utility holding company claiming exemption from registration under section 3(a)(1) by rule 2 under the Act (collectively, ''Applicants''), have filed an application-declaration under sections 3(a)(2), 6, 7, 9(a), 10, 11(b),

12(b) and 13(b) of the Act and rules 45, 54, 90 and 91 under the Act.

Allegheny proposes to acquire 100% of the outstanding securities of Mountaineer Gas. Mountaineer Gas is a directly owned subsidiary of Eastern Systems Corporation (''ESC''), a West Virginia holding company claiming exemption from registration under section 3(a)(1) by rule 2 under the Act and an indirectly owned subsidiary of ECA. Allegheny, ESC and ECA have entered into a stock purchase agreement under which Monongahela Power, as Allegheny's assignee, proposes to acquire 100% of the outstanding securities of Mountaineer Gas for approximately $223 million in cash and the assumption of $100 million in long-term debt (''Transaction''). The purchase price is subject to adjustment after closing based upon the closing date balance sheet.

Allegheny has three regulated public utility companies: Mononghela Power, a combination electric and gas utility which provides service to customers in West Virginia and Ohio; West Penn Power Company, an electric utility which provides service to customers in Pennsylvania; and The Potomac Edison Company, an electric utility which provides services to customers in Maryland, West Virginia, and Virginia. Collectively, the Allegheny system utilities do business as Allegheny Power. Allegheny Power, operating as a combination electric and gas system, delivers electric and gas to 1.4 million customers. Allegheny has several nonutility subsidiaries as well. For the twelve months ended December 31, 1999, Allegheny's revenues were approximately $2.8 billion.

Monongahela Power is headquartered in Fairmont, West Virginia. Monongahela Power provides electric service to approximately 351,000 West Virginia customers and approximately 28,000 Ohio customers. Monongahela Power, through its West Virginia Power gas division, provides natural gas service to approximately 24,000 customers in West Virginia.[1] For the twelve months ended December 31, 1999, Monongahela Power contributed $673 million or 24% of Allegheny's revenues.

Mountaineer Gas provides utility service to approximately 200,000 customers throughout West Virginia, including the cities of Wheeling, Martinsburg, Beckley, Huntington and Charleston. Mountaineer Gas' principal place of business is located in Charleston, West Virginia. Mountaineer Gas wholly owns Mountaineer Gas Services, which is primarily engaged in providing energy procurement and marketing services to Mountaineer Gas and owns approximately 375 wells and has gas storage facilities under contract. For the twelve months ended December 31, 1999, Mountaineer Gas had revenues of approximately $174 million. Mountaineer Gas' regulated activities contributed $162 million, or 94% of those revenues.

Allegheny seeks authorization to issue up to $162 million in long-term debt securities. Additionally, Allegheny seeks authorization to make a capital contribution of up to $165 million to Monongahela Power. The contribution will be funded through the requested debt securities issuance and $3 million in general funds. The contribution will be made in a combination of cash, guarantees or loans.

Monongahela Power seeks authority to issue up to $165 million in long-term debt securities for the purpose of acquiring Mountaineer Gas. Additionally, Monongahela Power seeks authorization to issue loans and guarantees to Mountaineer Gas in an aggregate amount up to $100 million. The amount of loans and guarantees issued is contingent upon the amount of Mountaineer Gas' debt assumed in the Transaction.

Upon completion of the acquisition, Mountaineer Gas seeks authority to issue up to $100 million in short-term debt. The short-term debt will be in the form of commercial paper and bank borrowings. The Applicants state that the short-term debt will be used primarily for financing ongoing operations.

All of the requested financing authority will have interest rates, fees, and expenses comparable to those obtainable by comparable entities issuing comparable securities with the same or similar terms and maturities.

The acquisition of the securities of Mountaineer Gas will be accounted for under the purchase method of accounting.

Following the acquisition of 100% of the securities of Mountaineer Gas, Mountaineer Gas will become a wholly owned subsidiary of Monongahela Power. Because Monongahela Power will acquire more than 10% of the stock of Mountaineer Gas, the Applicants are requesting an order under section 3(a)(2) of the Act exempting Monongahela Power from the provisions of the Act applicable to holding companies.[2]

Once Mountaineer Gas becomes a subsidiary of Monongahela Power, the Applicants propose that Allegheny Energy Service Corporation, Allegheny's service company, will act as a service company for Mountaineer Gas.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17281 Filed 7–7–00; 8:45 am]

BILLING CODE 8010–01–M

[1] *See Allegheny Energy, Inc., et al.,* Holding Co. Act Release No. 27121 (Dec. 23, 1999) (approving the retention of the purchased electric and gas assets of West Virginia Power).

[2] A ''holding company'' is defined in section 2(a)(7) of the Act to include any company that directly or indirectly owns 10% or more of the outstanding voting securities of a public utility company. Section 2(a)(5) defines a ''public-utility company'' to mean an electric utility company or a gas utility company. Section 3(a)(2) provides an exemption if the holding company is ''predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto.''

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24552]

Notice of Application for Deregistration Under Section 8(f) of the Investment Company Act of 1940

June 30, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June, 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 25, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of

Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

Oppenheimer Core Equity Fund [File No. 811–8807]; Oppenheimer Large Cap Value Fund [File No. 811–8810]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make any public offering or engage in business of any kind.

Filing Dates: Each application was filed on June 12, 2000.

Applicants' Address: Two World Trade Center, New York, New York 10048–0203.

Corefunds, Inc. [File No. 811–4107]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 24, 1998, applicant transferred its assets to Evergreen Equity Trust, Evergreen Select Equity Trust, Evergreen International Trust, Evergreen Fixed Income Trust, Evergreen Select Fixed Income Trust, Evergreen Municipal Trust, Evergreen Money Market Trust and Evergreen Select Money Market Trust (the ''Acquiring Funds'') based on net asset value. Expenses of $1,040,489 incurred in connection with the reorganization were paid by First Union National Bank.

Filing Date: The application was filed on May 20, 2000.

Applicant's Address: 530 East Swedesford Road, Wayne, Pennsylvania 19087.

Shepmyers Investment Company [File No. 811–2798]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 20, 2000, applicant transferred its assets to The National Portfolio of Smith Barney Muni Funds, based on net asset value. Expenses of $123,580 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on May 26, 2000.

Applicant's Address: P.O. Box 339, Route 194 South, Hanover, Pennsylvania 17331.

Congress Street Associates, L.P. [File No. 811–8801]

Summary: Applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. By March 21, 2000, applicant had distributed all of its assets to its shareholders based on net asset value. Expenses of $4,722 incurred in connection with the liquidation were paid by applicant's general partner and investment adviser, Congress Street Management, L.L.C.

Filing Date: The application was filed on May 17, 2000.

Applicant's Address: c/o PaineWebber Incorporated, 1285 Avenue of the Americas, New York, New York 10019.

Merrill Lynch Fund for Tomorrow, Inc. [File No. 811–3871]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 23, 1998, applicant transferred its assets to Merrill Lynch Fundamental Growth Fund, Inc. based on net asset value. Expenses of approximately $319,620 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on May 15, 2000.

Applicant's Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536–9011.

Templeton Global Real Estate Fund [File No. 811–5844]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 23, 1999, applicant transferred its assets to Franklin Real Estate Securities Fund, a series of Franklin Real Estate Securities Trust, based on net asset value. Expenses of $61,021 incurred in connection with the reorganization were paid equally by applicant, the acquiring fund, and their respective investment advisers.

Filing Date: The application was filed on June 2, 2000.

Applicant's Address: 500 East Broward Boulevard, Fort Lauderdale, Florida 33394–3091.

Investment Services for Education Associations Trust [File No. 811–7967]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 31, 1999, applicant made a liquidating distribution to its shareholders based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Dates: The application was filed on March 10, 2000, and amended on April 25, 2000, and June 9, 2000.

Applicant's Address: 1201 North Market Street, P.O. Box 1347, Wilmington, Delaware 19899–1347.

INVESCO Industrial Income Fund, Inc. [File No. 811–893]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 28, 1999, applicant transferred its assets to INVESCO Equity Fund, formerly named INVESCO Industrial Income Fund, a series of INVESCO Combination Stock & Bond Funds, Inc., based on net asset value. Expenses of $968,388 incurred in connection with the reorganization were paid equally by Invesco Funds Group, Inc., applicant's investment adviser, and applicant.

Filing Date: The application was filed on May 23, 2000.

Applicant's Address: 7800 E. Union Avenue, Denver, Colorado 80237.

INVESCO Emerging Opportunity Funds, Inc. [File No. 811–6234]; INVESCO Growth Funds, Inc. [File No. 811–352]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On July 15, 1999, applicants transferred their assets to INVESCO Small Company Growth Fund and INVESCO Blue Chip Growth Fund, respectively, each a series of INVESCO Stock Funds, Inc., based on net asset value. Expenses of $81,674, and $234,237, respectively, incurred in connection with the reorganizations were paid equally by applicants' investment adviser and the acquiring fund.

Filing Date: The applications were filed on May 23, 2000.

Applicants' Address: 7800 E. Union Avenue, Denver, Colorado 80237.

INVESCO Tax-Free Income Funds, Inc. [File No. 811–3177]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 16, 1999, INVESCO Tax-Free Bond Fund (formerly named INVESCO Tax-Free Long-Term Bond Fund), a series of applicant, transferred its assets to INVESCO Tax-Free Bond Fund, a new series of INVESCO Bond Funds, Inc., based on net asset value. Expenses of $31,084 incurred in connection with the reorganization were divided equally between INVESCO Funds Group, Inc., applicant's investment adviser, and INVESCO Tax-Free Bond Fund.

Filing Date: The application was filed on May 23, 2000.

Applicant's Address: 7800 E. Union Avenue, Denver, Colorado 80237.

INVESCO Value Trust [File No. 811–4595]

Summary: Applicant seeks an order declaring that it has ceased to be an

investment company. On May 28, 1999, INVESCO Total Return Fund, a series of applicant, transferred its assets to INVESCO Total Return Fund, a series of INVESCO Combination Stock & Bond Funds, Inc. On June 4, 1999, INVESCO Intermediate Government Bond Fund, a series of applicant, transferred its assets to INVESCO U.S. Government Securities Fund, a series of INVESCO Bond Funds, Inc. On July 15, 1999, INVESCO Value Equity Fund, a series of applicant, transferred its assets to INVESCO Value Equity Fund, a series of INVESCO Stock Funds, Inc. Expenses of $137,084 incurred in connection with the reorganization of applicant's INVESCO Total Return Fund series were paid equally by applicant's investment adviser and INVESCO Total Return Fund. Expenses of $87,458 were incurred in connection with the reorganization of applicant's INVESCO Intermediate Government Bond Fund series, with applicant's investment adviser paying $43,729, INVESCO Intermediate Government Bond Fund paying $13,524, and INVESCO U.S. Government Securities Fund paying $30,204. Expenses of $69,319 incurred in connection with the reorganization of applicant's INVESCO Value Equity Fund series were paid equally by applicant's investment adviser and INVESCO Value Equity Fund.

Filing Date: The application was filed on May 23, 2000.

Applicant's Address: 7800 E. Union Avenue, Denver Colorado 80237.

INVESCO Diversified Funds, Inc. [File No. 811–7984]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 4, 1999, applicant transferred its assets to INVESCO Small Company Growth Fund, a series of INVESCO Emerging Opportunity Funds, Inc., based on net asset value. Expenses of $86,881 were incurred in connection with the reorganization, of which applicant's investment adviser paid $43,440, applicant paid $11,596, and the acquiring fund paid $31,844.

Filing Date: The application was filed on May 23, 2000.

Applicant's Address: 7800 E. Union Avenue, Denver, Colorado 80237.

Farm Bureau Life Variable Account II [File No. 811–8639]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on May 23, 2000.

Applicant's Address: 5400 University Avenue, West Des Moines, Iowa 50266.

Farm Bureau Life Annuity Account II [File No. 811–8667]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on May 23, 2000.

Applicant's Address: 5400 University Avenue, West Des Moines, Iowa 50266.

Pegasus Variable Funds [File No. 811–8854]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 31, 1999, Applicant distributed all of its shares at net asset value to its shareholders in connection with Applicant's liquidation. Applicant's liquidation was completed pursuant to an in-kind substitution of securities permitted under Section 17(a) and 26(b) of the Investment Company Act of 1940 by a March 17, 1999 SEC exemptive order. Legal expenses of $33,689.37 incurred in connection with the liquidation were paid by Pegasus Variable Funds ($4,361.87) and One Group Investment Trust, the substituted Fund ($29,327.50). No other expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on June 12, 2000.

Applicant's Address: 1111 Polaris Parkway, P.O. Box 710211, Columbus, OH 43271–0211.

Select Advisors Portfolios [File No. 811–8778]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 31, 1998, applicant, the master fund in a master/feeder structure, made a liquidating distribution to its shareholders, based on net asset value. Expenses of $206,646 incurred in connection with the liquidation were paid by Touchstone Advisors, Inc., applicant's investment adviser.

Filing Dates: The application was filed on February 7, 2000, and amended on May 25, 2000, and June 27, 2000.

Applicant's Address: 311 Pike Street, Cincinnati, Ohio 45202.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17282 Filed 7–7–00; 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 will hold the following meeting during the week of July 10, 2000.

A closed meeting will be held on Thursday, July 13, 2000 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) ad 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled Thursday, July 13, 2000 will be:

(1) Institution and settlement of injunctive actions; and

(2) Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: July 5, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17443 Filed 7–6–00; 10:55 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42999; File No. SR–BSE–00–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Mandatory Decimal Pricing Testing

June 30, 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 June 27, 2000, the Boston Stock Exchange, Inc. (''BSE'' 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 Exchange has designated this proposal as one concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) 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 BSE proposes to add rules relating to decimal pricing testing in order to prepare for the industry-wide conversion to decimal pricing. The text of the proposed rule change is available at the BSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 BSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add Section (10) (Decimal Pricing Testing) to Chapter XXXIII, Boston Exchange Automated Communication Order-routing Network (BEACON). Specifically, the Exchange seeks to change its rules to require member firms to participate in industry-wide testing of computer systems, as required, in order to prepare for the conversion to decimal pricing.

The Exchange, in cooperation with other self-regulatory organizations (''SROs'') has been preparing for a successful industry-wide conversion to decimal pricing. As several other SROs have proposed rules to require decimal testing by their members, the Exchange seeks to codify this requirement as well. The new Rule will require mandatory participation of Exchange members in the testing which will be taking place, and will require any firm which has an electronic interface with the Exchange to conduct testing between the electronic interface and the Exchange (''point-to-point testing''). In the case of a member firm that has an electronic interface through a third party service provider, point-to-point testing with the Exchange will not be required if (i) the member firm conducts successful testing with the service provider, (ii) the service provider conducts successful testing with the Exchange (on behalf of the member firm) and (iii) the Exchange agrees that no further testing is necessary.

The proposed Rule also details the reporting and documentation requirements for all members participating in either the point-to-point testing or the industry-wide testing. Specifically, member firms will be asked to provide reports as determined necessary by the Exchange throughout the course of testing. Additionally, all member firms will be required to keep, and make available for inspection, documentation of all the testing they do as part of the requirements of this Rule.

2. Statutory Basis

The Exchange represents that the statutory basis for the proposed rule change is Section 6(b)(5) [4] of the Act, in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

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 rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [5] and subparagraph (f)(3) of Rule 19b–4 thereunder [6] because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(3).

available for inspection and copying in the Commission's Public Reference Room in Washington, D.C.

Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–00–07 and should be submitted by July 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17331 Filed 7–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43000; File No. SR–CBOE–00–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to a Reduction in the Value of the Nasdaq 100 Stock Index

June 30, 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 June 30, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. On June 30, 2000, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] 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 CBOE proposes to trade options on the Nasdaq 100 Index based on reduced-value level equal to one-tenth of its present value by multiplying the divisor used in calculating the Index by a factor of 10. In seeking approval to trade options based upon one-tenth of the value of the Nasdaq 100 Index, the Exchange represents that it is planning to list options on the reduced value Nasdaq 100 Index value at the same time it continues to list and trade options on the full value of the Nasdaq 100 Index. In connection with this change, the Exchange proposes to multiply by a factor of 10 the position and exercise limits for the one-tenth level index. When the Exchange trades full value and reduced value Nasdaq 100 options at the same time, the Exchange will require that the positions in the full value and reduced value contracts be aggregated for the purpose of determining compliance with the position and exercise limits. In addition, the Exchange proposes to amend Exchange Rule 24.9, Interpretation .01 to provide that the reduced-value Nasdaq 100 options will have a strike price interval of no less than $2.50. The text of the proposed rule change is available at the CBOE and at the Commission's Public Reference Room.

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 CBOE began trading Nasdaq 100 Index (''NDX'') options in February 1994.[4] NDX options are European-style, cash-settled options on the Nasdaq-100 Index. The Nasdaq-100 Index is a modified capitalization-weighted index of 100 of the largest non-financial securities traded on the Nasdaq Stock Market. In recent years, on the strength of a sustained bull market, the value of the NDX has tripled since the mid-1998, such that the value of the Index stood at 4,034.17 as of April 4, 2000. As a result of the significant increase in the value of the underlying index, the premium for NDX options has also increased. The CBOE believes that this has caused NDX options to trade at a level that may be uncomfortably high for retail investors.

As a result, Nasdaq (the reporting authority for the Index) has approved CBOE's request to trade options based on a reduced index level equal to one-tenth of the Nasdaq-100 Index. In seeking approval to trade options based upon one-tenth of the value of the Nasdaq 100 Index, the Exchange represents that it is planning to list options on the reduced value Nasdaq 100 Index value at the same time it continues to list and trade options on the full value of the Nasdaq 100 Index. In addition, the trading symbol for options on the reduced-value Nasdaq 100 Index will no longer be NDX.

In addition to the strike price being reduced by one-tenth, the CBOE proposes to increase the position and exercise for the reduced value Nasdaq 100 Index by a factor of 10.[5] The CBOE believes that this increase in the position and exercise limits is justified because the reduction contract size would result in each contract overlying only one-tenth of the value of a current Nasdaq 100 Index contract. Consequently, the revised position and exercise limits would be equivalent to the current levels in terms of the value of the Index, which the option positions would overlie. Further, when a person trades full value and reduced value Nasdaq 100 options at the same time, the Exchange will require that the positions in the full value and reduced value contracts be aggregated for the purpose of determining compliance with the position and exercise limits.

According to the Exchange, position limits were intended to prevent a particular customer or firm from manipulating the value of an index by limiting the notional value of an index that any particular person or firm could control. The proposed nominal increase (by ten times in the case of one-tenth value options) does not change the notional value that any particular

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On June 30, 2000, the CBOE submitted a letter from Timothy Thompson, Assistant General Counsel, CBOE, to Joe Corcoran, Attorney, Division of Market Regulation, Commission, amending the proposal (''Amendment No. 1''). In Amendment No. 1 the CBOE requested that the Commission review the proposal under Rule 19b–4(f)(6). The CBOE also expressed its intent to list and trade options on the Nasdaq 100 Index at one-tenth its value, even though it initially sought approval to list options on the Nasdaq 100 Index based upon a reduced index level equal to one-tenth and/or one-fortieth of the Nasdaq 100 Index. Moreover, the CBOE clarified that it will also continue to trade the full value Nasdaq 100 Index options. The Commission notes that filings submitted under Section 19(b)(3)(A) of the Act must be complete upon filing. Because CBOE amended this proposal to file it under Section 19(b)(3)(A) of the Act, the date of the amendment is deemed the date of the filing of the proposal.

[4] *See* Securities Exchange Act Release No. 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994).

[5] The Exchange has separately filed for an increase in the position and exercise limits for NDX in SR–CBOE–00–14.

person or firm may control. Based on the current contract notional value of approximately $400,000 and the 25,000 contract position limit, and particular person or firm could control a portfolio valued roughly at $10 billion. By reducing the contract size by a factor of 10 of $40,000 while increasing the position limit to 250,000 contracts would have no effect on the value of the portfolio that could be controlled by a particular person or firm. In addition, the 100 stocks comprising the Nasdaq 100 Index are among the largest and most liquid stocks listed on the Nasdaq National Market System, and are frequently among the daily most active securities. Like other broad-based indexes, the Nasdaq 100 is sufficiently diversified and liquid so as to minimize the possibility of manipulation. Moreover, given that technology has grown to become a major component of the U.S. economy and investment portfolios, the Exchange believes that a position limit increase, if it were proposing one, for options on the Nasdaq 100 Index is justified and consistent with the limits applied to other broad-based products.

The Exchange currently intends to begin trading the reduced value contracts beginning on July 10, 2000. It is possible that the exchange will delay the introduction of the reduced value contracts until some later time depending on whether any business or operational issues arise. In any event, the Exchange will provide adequate advance notice to its member firms so that they may be prepared for the introduction of the reduced value contracts and so that they may in turn provide adequate notice to their customers. The Exchange has a strong interest in publicizing the introduction of the reduced value contracts and will take a number of measures to inform the firms and potential customers including publication of a regulatory circular, marketing brochures and notification through the Exchange's web site.

The Exchange expects that the proposed change will attract additional customer business in Nasdaq 100 Index options in those series in which retail customers are most interested in trading. For example, an April 4040 (at the money) call option series currently trades at approximately $20,500 per contract. With the index split, the same option series (once adjusted), with all else remaining equal, would trade at approximately $2,050 per contract. The Exchange believes that the proposed change will permit some investors to trade these options who have otherwise been priced out of the market due to the recent market surge. The Exchange believes that NDX options provide an important opportunity for investors to hedge and speculate upon the market risk associated with the stocks comprising this broad-based and widely followed index. By reducing the value of the index, such investors will be able to utilize this trading vehicle while extending a smaller outlay of capital. This should attract additional investors, and, in turn, create a more active and liquid trading environment.

The Exchange believes that reducing the value of the index does not raise manipulation concerns and will not cause adverse market impact, because the Exchange will continue to employ the same surveillance procedures and has proposed an orderly procedure to achieve the index split, including adequate prior notice to market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)[6] of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any 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

Because the foregoing proposed rule: (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 or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] Although Rule 19b–4(f)(6) requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission waived this requirement at the CBOE's request.

The Commission also notes that under Rule 19b–4(f)(6)(iii), the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The CBOE requests a waiver of this 30-day period to begin trading the reduced-value options on July 10, 2000. The CBOE believes that acceleration of the operative date of the proposed rule is appropriate because it will allow the Exchange to offer investors a more affordable alternative to hedge their exposure to the Nasdaq 100 Index. According to the Exchange, the Nasdaq 100 Index has been especially volatile in the last few weeks and the acceleration of the proposed change will allow the Exchange to offer this more affordable hedging alternative to a time when it is most needed. In addition, the Exchange notes that the American Stock Exchange has a rule (Commentary .03 to Amex Rule 901C) that allows it to split an index without first submitting a filing. For the reasons discussed above, the Commission finds that the waiver of the 30-day period is consistent with the protection of investors and the public interest.[9]

At any time within 60 days of the filing of the proposed rule change, as amended, 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] The Commission notes that this proposal is similar to another CBOE proposal that the Commission approved in 1993. In the 1993 proposal, the CBOE proposed to trade options on the S&P 500 Index (''SPX'') based on reduced-value level equal to one-tenth of its then-present value. In the order approving the proposal, the Commission determined that potential manipulation concerns were minimized by the fact that positions in the reduced value SPX options and full value SPX options would be aggregated for position and exercise limit purposes. *See* Release No. 34–32893 (September 14, 1993), 58 FR 49070 (September 21, 1993) (File No. SR–CBOE–93–12).

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 CBOE. All submissions should refer to File No. SR–CBOE–00–15 and should be submitted by July 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17332 Filed 7–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43005; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Approving Request To Extend Temporary Effectiveness of Reporting Plan for Nasdaq/National Market Securities Trade on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago, Philadelphia and Cincinnati Stock Exchanges

June 30, 2000.

I. Introduction

On June 27, 2000, the National Association of Securities Dealers, Inc. (''NASD''), on behalf of itself and the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), the Cincinnati Stock Exchange (''CSE'') and the Philadelphia Stock Exchange, Inc. (''Phlx'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposal to extend the operation of a joint transaction reporting plan (''Plan'')[1] for Nasdaq/National Market (''Nasdaq/NM'') (previously referred to as Nasdaq/NMS) securities traded on an exchange on an unlisted or listed basis.[2] The proposal would extend the effectiveness of the Plan, as amended by Amendment No. 10, through March 31, 2001.[3] The Commission also is extending certain exemptive relief as described below. The June 2000 Extension Request also request that the Commission approve the Plan, as amended, on a permanent basis on or before March 31, 2001. During the extension of the Plan, the Commission will consider whether to approve the proposed Plan, as amended, on a permanent basis.

II. Background

The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/NM securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.[4] The Commission approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. The Commission originally approved the Plan on June 26, 1990.[5] Accordingly, the pilot period commenced on July 12, 1993 and was scheduled to expire on July 12, 1994.[6] The Plan has since been in operation on an extended pilot basis.[7]

III. Description of the Plan

The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors, subscribers and others of quotation and transaction information in ''eligible securities.''[8] The Plan contains various provisions concerning its operation, including: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access, Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer (''BBO''); Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.[9]

IV. Exemptive Relief

In conjunction with the Plan, on a temporary basis, the Commission

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[10] 17 CFR 200.30–3(a)(12).

[1] *See* Letter from Robert E. Aber, Vice President and General Council, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated June 27, 2000 (''June 2000 Extension Request''). The June 2000 Extension Request also requests that the Commission continue to provide exemptive relief, previously granted in connection with the Plan on a temporary basis, from Rules 11Ac1–2 and 11Aa3–1 under the Securities Exchange Act of 1934, as amended (''Act''). 15 U.S.C. 78a *et seq.* The signatories to the Plan are the Participants for purposes of this release, however, the BSE joined the Plan as a ''limited participant'' and reports quotation information and transaction reports only in Nasdaq/NM securities listed on the BSE. Originally, the American Stock Exchange Inc. (''Amex'') was a Participant but withdrew its participation from the Plan in August 1994.

[2] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges (''UTP'') under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are traded over-the-counter (''OTC/UTP''), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of the Section 12(f) requirement, *see* November 1995 Exchange Order, *infra* note 7.

[3] On December 23, 1999, the Commission approved the addition of CSE as a Participant to the Plan. The Plan was also changed to reflect that the Midwest Stock Exchange is now called the Chicago Stock Exchange. *See* Securities Exchange Act Release No. 42269 (December 23, 1999), 65 FR 799 (January 6, 2000).

[4] *See* Section 12(f)(2) of the Act.

[5] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (''1990 Plan Approval Order'').

[6] *See* letter from David R. Rusoff, Foley & Lardner, to Betsy Prout, Division of Market Regulation. (''Division''), dated May 9, 1994.

[7] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); Securities Exchange Act Release No. 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); Securities Exchange Act Release No. 36368 (October 13, 1995); 60 FR 54091 (October 19, 1995); Securities Exchange Act Release No. 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995) (''November 1995 Extension Oder''); Securities Exchange Act Release No. 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); Securities Exchange Act Release No. 36650 (December 28, 1995), 61 FR 358 January 4, 1996); Securities Exchange Act Release No. 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); Securities Exchange Act Release No. 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); Securities Exchange Act Release No. 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); Securities Exchange Act Release No. 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); Securities Exchange Act Release No. 38794 (June 30, 1997) 62 FR 36586 (July 8, 1997); Securities Exchange Act Release No. 39505 (December 31, 1997) 63 FR 1515 (January 9, 1998); Securities Exchange Act Release No. 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998); Securities Exchange Act Release No. 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999); and Securities Exchange Act Release No. 42268 (December 23, 2999), 65 FR 1202 (January 6, 2000).

[8] The Plan defines ''eligible security'' as any Nasdaq/NM security as to which unlisted trading privileges have been granted to a national securities exchange pursuant to Section 12(f) of the Act or that is listed on a national securities exchange. On May 12, 1999, the Commission expanded the number of eligible Nasdaq/NM securities that may be traded by the CHX pursuant to the Plan from 500 to 1000. *See* May 1999 Approval Order, *supra* note 7.

[9] The full text of the Plan, as well as ''Concept Paper'' describing the requirements of the Plan, are contained in the original filing which is available for inspection and copying in the Commission's public reference room.

granted an exemption to vendors from Rule 11Ac1–2 under the Act regarding the calculation of the BBO [10] and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. As discussed further below in the Summary of Comments, the Participants ask in the June 2000 Extension Request that the Commission grant an extension of the exemptive relief described above to vendors until the BBO calculation issue is fully resolved. In addition, in the June 2000 Extension Request, the Participants request that the Commission grant an extension of the exemptive relief described above to the BSE for as long as the BSE is a Limited Participant under the Plan.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. The Commission continues to solicit comment regarding the BBO calculation, the trade through rule and any issues presented by changes occurring in the market place. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written communications relating to the proposal 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. All submissions should refer to File No. S7–24–89 and should be submitted by July 31, 2000.

VI. Discussion

The Commission finds that an extension of temporary approval of the operation of the Plan, as amended, through March 31, 2001, is appropriate and in furtherance of Section 11A of the Act.[11] The Commission believes that the extension will provide the Participants with additional time to seek Commission approval of pending proposals concerning the BBO calculation and to begin to make reasonable proposals concerning a trade through rule to facilitate the trading of OTC securities pursuant to UTP. With respect to a trade through rule, the Commission notes that it has recently expanded the ITS linkage to all securities, thereby expanding the coverage of the ITS trade through rule.[12] While the Commission continues to solicit comment on these matters, the Commission believes that these matters should be addressed directly by the Participants on or before December 31, 2001 so that the Commission may have ample time to determine whether to approve the Plan on a permanent basis by March 31, 2001.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1–2 under the Act until the earlier of March 31, 2001, or until such time as the calculation methodology of the BBO is based on a price/size/time algorithm pursuant to a mutual agreement among the Participants approved by the Commission. The Commission further finds that it is appropriate to extend the exemptive relief from Rule 11Aa3–1 under the Act, that requires transaction reporting plans to include market identifiers for transaction reports and last sale data, to the BSE through March 31, 2001. The Commission believes that the extensions of the exemptive relief provided to vendors and the BSE, respectively, are consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

VII. Conclusion

It Is Therefore Ordered, pursuant to Section 12(f) and 11A of the Act and paragraph (c)(2) of Rule 11Aa3–2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan, as amended, for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis through March 31, 2001, and certain exemptive relief through March 31, 2001, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

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BILLING CODE 8010–01–M

[10] Rule 11Ac1–2 under the Act requires that the best bid or best offer be computed on a price/size/time algorithm in certain circumstances. Specifically, Rule 11Ac1–2 under the Act provides that ''in the event two or more reporting market centers make available identical bids or offers for a reported security, the best bid or offer . .. shall be computed by ranking all such identical bids or offers * * * first by size * * * then by time.'' The exemption permits vendors to display the BBO for Nasdaq securities subject to the Plan on a price/time/size basis.

[11] In approving this extension, the Commission has considered the extension's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[12] Securities Exchange Act Release No. 42212 (December 9, 1999), 64 FR 70297 (December 16, 1999).

[13] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42998; File No. SR–PCX–00–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange Inc., Relating to Mandatory Decimal Pricing Testing

June 30, 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 June 23, 2000, the Pacific Exchange, Inc. (''PCX'' 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 Exchange has designed this proposal as one concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) 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 PCX proposes to adopt new Rule 1.15(b), *Mandatory Decimal Pricing Testing,* which would require member organizations to participate in industry testing of computer systems designed to prepare for the industry conversion to decimal pricing. The text of the proposed rule change is available at the PCX 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 proposed rule change and discussed any comments it received on the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX 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

As the securities industry prepares for the conversion to decimal pricing, testing by and among the various securities industry constituents will be necessary to avoid widespread systems problems. The PCX, in cooperation with the Commission and other self-regulatory organizations has been working toward a successful transition to decimal pricing. The purpose of proposed rule change is to require PCX member firms to participate in testing of computer systems designed to prepare for the industry conversion to decimal pricing.

Proposed Rule 1.15(b) would require PCX members to participate in testing of computer systems, in a manner and frequency prescribed by the Exchange. It is the PCX's understanding that other self-regulatory organizations, including the National Association of Securities Dealers, the New York Stock Exchange, the American Stock Exchange and the Chicago Board Options Exchange, are also proposing rules to require decimal pricing testing by their member organizations.

To ensure that the securities industry is adequately prepared to convert to decimals, the Securities Industry Association has undertaken to coordinate industry-wide testing. Testing will include, among others, exchanges, registered clearing corporations, data processors and broker-dealers. There are multiple industry-wide tests, the first of which occurred in April 2000. New Rule 1.15(b) will be employed to require mandatory testing of PCX member organizations in these tests, and further provides that any firm with an electronic interface with the Exchange will be required to conduct point-to-point testing with the Exchange. Point-to-point testing means testing between two entities, in this case between the member with the electronic interface and the Exchange.[4]

The Exchange will require its members to participate in industry-wide testing to the extent those firms can be accommodated into the testing schedule. The Exchange would exercise its authority under this Rule to the extent it is deemed important for particular member organizations to participate and to the extent those member organizations choose not to participate voluntarily.

The proposed rule would also require member organizations to file reports with the PCX concerning the required tests in the manner and frequency required by the Exchange. A member organization that is subject to the Rule and fails to participate in the tests or fails to file any required reports will be subject to disciplinary action pursuant to Rule 10 of the Exchange's rules.

It should be noted that the Exchange believes that it currently has the authority without the approval of this Rule to require testing and reporting with respect to the implementation of decimal pricing under its broad authority to enforce the provisions of the Act and to ensure the safety of its marketplace. The Exchange believes, however, that its membership is better served by having the specifics of its intentions with respect to this matter defined in a stand-alone rule.

This Rule will expire automatically upon the full completion of decimal pricing implementation.

2. Statutory Basis

The Exchange represents that by adopting a new rule to help ensure the participation of Exchange members in important industry testing to prepare for the conversion to decimal pricing, the proposed rule change is consistent with Section 6(b) of the Act[5] in general and further the objectives of Section 6(b)(5)[6] in particular, in that they are designed to promote just and equitable principles of trade and to protect investors and the public interest.

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

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 rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(3) of Rule 19b–4 thereunder[8] because it is concerned solely with the administration of the Exchange. At 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 of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC.

Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–17 and should be submitted by July 31, 2000.

[4] A member organization can be exempted from this requirement if the member organization has its electronic interface through a service provider if the service provider conducts successful tests with the Exchange on behalf of the firms it serves, if the member firm conducts successful point-to-point testing with the service provider by a time designated by the Exchange, and if the Exchange agrees that no further testing is necessary.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17334 Filed 7–7–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43002; File No. SR–Phlx–00–45]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Eliminating References to the Semi-Annual Payment of Dues in By-Law Article XIV, Section 14–1

June 30, 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 June 5, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to eliminate a reference to the semi-annual billing of dues in By-law Article XIV, Section 14–1 to reflect a recent amendment to the schedule of dues, fees and charges.[3]

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 Phlx 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 Phlx 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 eliminate a reference to the semi-annual billing of dues in Article XIV of the By-laws to make Article XIV consistent with the recently amended schedule of dues, fees and charges.[4] The amendment eliminates a provision in the By-laws that requires the payment of dues and foreign currency options users fees on a semi-annual basis. The Board, when it amended the fee schedule, authorized the billing of dues and foreign currency options users fees on a monthly basis. The Phlx believed that the amended fee schedule would improve the efficiency of the billing process, allow members, member organizations, participants, and participant organizations to more accurately measure operating expenses on a monthly basis, and reduce operational cash flow burdens that may have resulted from the semi-annual billing schedule. To make Article XIV, Section 14–1 consistent with the amended fee schedule, Phlx proposes to eliminate the reference to semi-annual billing.

2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with Section 6 of the Act,[5] in general, and with Section 6(b)(4),[6] in particular, in that it provides for an equitable allocation of dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any 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 received in response to Circular 57–00, dated March 29, 2000.[7]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9] At 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 of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–45 and should be submitted by July 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17333 Filed 7–7–00; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 42457 (March 3, 2000) (SR–Phlx–99–61).

[4] *Id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] According to the Phlx, the proposed amendment to By-Law Article XIV Section 14–1 was initially approved by the Board on March 22, 2000 and was noticed to the membership in Circular 57–00 on March 28, 2000 in compliance with Exchange By-law Article XXII, Section 22–2. No written request for a special meeting regarding the proposed amendment was filed with Office of the Secretary. On April 11, 2000 the Secretary conducted a poll of the Board of Governors which resulted in unanimous consent in writing to adopt the proposed amendment to the By-Law and authorized the filing of the amendment with the Commission.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42993; File No. SR–Phlx–99–51]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Assessing a $1,500 Monthly Capital Funding Fee on a Permanent Basis

June 29, 2000.

I. Introduction

On November 26, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with 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 to assess seat owners a monthly capital funding fee of $1,500 per seat owned for a period of 36 months (''permanent fee proposal''). The proposed rule change was published for comment in the **Federal Register** on February 17, 2000.[3] The Commission received twenty-two comment letters from fourteen commenters regarding the proposal. [4] On May 19, 2000, the Phlx filed Amendment No. 1 to the proposal. [5]

During the pendency of the permanent fee proposal, the Commission approved another proposed rule to implement the fee on a pilot basis. Specifically, on January 5, 2000, the Commission granted accelerated approval of the capital funding fee on a three-month pilot basis. [6] On April 24, 2000, a proposed rule change extending the pilot program until July 6, 2000 became immediately effective under Section 19(b)(3)(A) of the Act. [7]

This order approves the permanent fee proposal, accelerates approval of Amendment No. 1, and solicits comments from interested persons on that Amendment.

II. Description of the Proposal

a. The Original Filing

The Phlx proposed to amend its schedule of dues, fees, and charges to charge a monthly capital funding fee of $1,500 per Exchange seat to seat owners [8] for a period of 36 months. The Phlx represents that the capital funding fee will be imposed on each of the 505 Exchange seat owners on the last business day of the calendar month. In order to be charged the fee, a seat owner must own a seat on the last business day of the month preceding the month that is being billed. Thus, at the beginning of each month, the seat owner will be billed for that entire month. [9] The Exchange represents that it intends to segregate the funds generated from the $1,500 fee from Phlx's general funds.

The Phlx represents that the capital funding fee is a part of its long-term financing plan.[10] The fee will be charged for 36 consecutive months beginning on July 6, 2000. This monthly fee will provide funding for technological improvements and other capital needs.[11] Specifically, it is intended to fund capital purchasers, including hardware for capacity upgrades, development efforts for decimalization, and trading floor expansion. The Phlx also represents that revenue raised from the fee will be utilized over a three-year period, after which time the Phlx intends to reevaluate its financing plan to determine whether to continue assessing the fee. The Phlx represents that the revenue generated from the fee will assist it in remaining competitive in the capital markets environment. The Exchange reserves the right to suspend the fee or to cease charging it altogether at any time.

b. Amendment No. 1

In Amendment No. 1, the Phlx represents that it is a Delaware non-stock corporation, and states that it believes that assessing the capital funding fee on the owners of the Exchange's 505 memberships is appropriate under Delaware law. Amendment No. 1 states that Section 102(a)(4) of the Delaware General Corporation Law (''DGCL'') provides that the certificate of incorporation or by-laws of a non-stock corporation shall state the ''conditions of membership of such corporations.'' [12] The Phlx represents that its Certificate Incorporation authorizes its Board of Governors to impose fees on the owners of the Exchange's memberships, including owners who are lessors of memberships.[13] The Phlx asserts that its By-Laws already impose various fees on lessors of memberships and other persons and entities that own equitable title to Exchange memberships.[14]

Amendment No. 1 further states that, under Section 102(a)(3) of the DGCL, the certificate of incorporation of a Delaware corporation must state the ''nature of the business or purposes to be conducted or promoted'' by the corporation. The Phlx represents that Article Third of its Certificate of Incorporation provides that the nature of the business and the objects and purposes of the Exchange include the authority:

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42405 (February 8, 2000), 65 FR 8226. The capital funding fee was originally proposed on October 1, 1999, in SR–Phlx–99–43. *See* Securities Exchange Act Release No. 42058 (October 22 1999), 64 FR 58878 (December 15, 1999). However, on November 17, 1999, the Exchange withdrew SR–Phlx–99–43. This proposed rule change replaces SR–Phlx–99–43.

[4] *See* Section III below for a discussion of the comment letters. The comments received in response to SR–Phlx–99–43 are included, to the extent relevant, in the discussion contained in Section III.

[5] *See* Letter from Cindy Hoekstra, Attorney, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 18, 2000 (Amendment No. 1). In Amendment No. 1, the Phlx represents that it believes that assessing the capital funding fee on the Exchange's seat owners is appropriate under Delaware law. The Phlx's arguments are more fully described below.

[6] *See* Securities Exchange Act Release No. 42318 (January 5, 2000), 65 FR 2216 (January 13, 2000) (SR–Phlx–99–49).

[7] *See* 15 U.S.C. 78s(b)(3)(A); Securities Exchange Act Release No. 42714 (April 24, 2000), 65 FR 25782 (May 3, 2000) (SR–Phlx–00–29).

[8] The term ''owner'' is defined in Phlx's Certificate of Incorporation as ''any person or entity who or which is a holder of equitable title to a membership in the Phlx.'' *See* Phlx's Certificate of Incorporation, Article Twentieth; Securities Exchange Act Release No. 42773 (May 11, 2000) 65 FR 31622 (May 18, 2000) (approving proposal to add definition of ''owner'' to Certificate of Incorporation). Although the term ''seat owner'' is not defined in the Phlx's By-Laws or Certificate of Incorporation, the term ''seat'' refers to a membership in the Phlx. Telephone conservation between Maria Chidsey, Attorney, Division of Market Regulation, Commission, and Bob Ackerman, Senior Vice President, Chief Regulatory Officer, Phlx (January 5, 2000).

[9] For example, owners of record on September 30 will be billed $1,500 for the month of October.

[10] The other part of that financing plan is a credit to qualified members against certain member fees, dues, and other amounts owned to the Phlx. On May 15, 2000, a proposed rule change implementing that credit on a six-month pilot basis became immediately effective under Section 19(b)(3)(A) of the Act. *See* Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000) (SR–Phlx–00–44).

[11] This fee is distinguished from the Exchange's technology fee in that the technology fee was intended to cover system software modifications, Year 2000 modifications, specific system development (maintenance) costs, SIAC and OPRA communication charges, and ongoing system maintenance charges. The technology fee became effective upon filing in March 1997. *See* Securities Exchange Act Release No. 38394 (March 12, 1997), 62 FR 13204 (March 19, 1997) (SR–Phlx–97–09).

[12] *See* Amendment No. 1, at 5.

[13] The Phlx cites Article Twentieth of its Certificate of Incorporation, which authorizes the Board of Governors to impose fees on ''owners [and] lessors and lessees of memberships.'' *See* Amendment No. 1, at fn. 9.

[14] The Phlx cites Section 12–8 of its By-Laws, as authorizing the Board of Governors to assess initiation, application, and transfer-of-title fees on lessors. *See* Amendent No. 1, at fn. 10.

To act as and to provide a securities exchange where the corporation's members and other persons authorized by it can buy, sell, pledge, exchange, trade and deal in any article of commerce, including, without limitation, stocks, bonds, and other securities * * * and generally to operate as and perform all of the functions of a national securities exchange.[15]

The Exchange also represents that Section 121(a) of the DGCL gives a corporation and its director's broad powers to conduct the operations and achieve the objects and purposes of the corporation. In addition to powers expressly granted by law or the certificate of incorporation, the corporation and its directors may exercise ''any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation.'' Further, the Phlx asserts that under Section 141(a) of the DGCL, a corporation's board of directors has the legal obligation to manage the business and affairs of the corporation.

Based on these provisions of the DGCL and the nature and purpose of the Exchange, the Exchange maintains that it has the general power to assess a fee on the owners of Exchange seats and that the capital funding fee is an appropriate exercise of that power. The Phlx represents that the owners of the 505 memberships on the Exchange benefit both from the value of their seats and from doing business on the Exchange's facilities (either directly or through agents or lessees who pay fees to owners). Under these circumstances, the Exchange asserts that it believes that assessing the capital funding fee on owners is warranted.

III. Summary of Comments

The Commission received twenty-two comment letters from fourteen commenters regarding the proposed rule change. All of the commenters opposed the proposed rule change. Although the comments specifically expressed concern about the capital funding fee, they also expressed general disapproval of the Phlx financing plan, which consists of the capital funding fee and the monthly credit of up to $1,000 for qualified members. The monthly credit is available to members who own their memberships (''member-owners'') and other members who are so closely connected to the owners that the Phlx believes they should be treated as member-owners (collectively, ''qualified members'').[16]

One commenter raised concerns that the capital funding fee in conjunction with the credit would be an inequitable allocation of fees, dues and other charges.[17] Seven other commenters[18] also expressed concerns that the Phlx financing plan would inequitably assess fees on seat owners. One of those seven commenters complained that his income from the seat he owned would be substantially reduced after paying the capital funding fee.[19]

Several commenters argued that the $1,500 capital funding fee is excessive and lacks justification. One commenter stated that the amount of the fee is an excessive initial sum.[20] Another characterized the fee as an onerous financial burden on seat owners. He argued that the fee is unjustified because of the vague purpose of providing technological improvements and other capital needs.[21] Four commenters argued that the Phlx should consider other means of raising capital and reducing expenses, such as reducing salaries, bonuses, entertainment costs, and other operating costs.[22]

Four commenters expressed concern that the management of the Exchange was not serving the best interests of members, customers, seat owners, or the public.[23] One commenter requested that he be appointed to the Board of Governors of the Phlx.[24] Another commenter complained specifically about the actions and management decisions of the Chairman of the Phlx.[25]

Several commenters stated that the Phlx is attempting to reduce the value of seats on the Exchange, thus jeopardizing the future of the Exchange.[26] One such commenter argued that there is too much volatility in the seat prices and complained that the Phlx is deliberately attempting to dilute the value of the seats.[27]

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission believes the proposed rule change is consistent with the requirement of Section 6(b)(4)[28] that the rules of an exchange provide for the equitable allocation of reasonable fees, dues, and other charges among its members and issuers and other persons using its facilities; and the requirement of Section 6(b)(5)[29] that the rules of the exchange are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.[30]

The Commission finds that the Phlx's capital funding fee is consistent with the Act because it is an across-the-board assessment on all seat owners intended to raise revenues to provide capital improvements to the Exchange. The capital funding fee is assessed uniformly to each seat owner per seat owned. Thus, it conforms to the requirements in the Act that the rules of the exchange provide for the equitable allocation of reasonable fees, dues, and other charges among its members and issuers and other persons using its facilities; and are not designed to permit

[15] *See* Amendment No. 1, at 6.

[16] *See supra* note 10. For an explanation of the credit, *see* Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000).

[17] *See* Letter from Mark Desiderio to Jonathan G. Katz, Secretary, Commission, dated October 16, 2000 (''Letter from Desiderio'').

[18] *See* Letters from: Harry Green to Jonathan G. Katz, Secretary, Commission, dated November 30, 1999, and December 21, 1999 (''Letters from Green''); Gilbert Goldstein to Jonathan G. Katz, Secretary, Commission, dated December 23, 1999 (''Letter from Goldstein''); George Nassar to Jonathan G. Katz, Secretary, Commission, dated December 17, 1999 (''Letter from Nassar''); Stanley Miller to Jonathan G. Katz, Secretary, Commission, dated January 3, 2000 (''Letter from Miller''); Michel Mesirov to Jonathan G. Katz, Secretary, Commission, dated October 15, 1999, and December 20, 1999 (''Letters from M. Mesirov''); Matthew Wayne, Vanacso, Wayne & Genelly, to Jonathan G. Katz, Secretary, Commission, dated October 15, 1999 and December 17, 1999 (''Letters from Wayne''); and William Kramer to Jonathan G. Katz, Secretary, Commission, undated (''Letter from Kramer'').

[19] *See* Letter from Miller.

[20] *See* Letter from Doris Elwell to Arthur Levitt, Chairman, Commission, dated October 4, 1999 (''Letter from Elwell'').

[21] *See* Letter from Desiderio.

[22] *See* Letters from Goldstein; Elwell; Letter from Karen Janney to Arthur Levitt, Chairman, Commission, undated (''Letter from Janney''); and Letters from Richard Mesirov to Jonathan G. Katz, Secretary, Commission, dated October 15, 1999 and December 20, 1999 (''Letters from R. Mesirov'').

[23] *See* Letters from: Green; Paul Liang to Jonathan G. Katz, Secretary, Commission, dated October 15, 1999, and to Arthur Levitt, Chairman, Commission, dated October 25, 1999 (''Letters from Liang''); Charles Hayes to Jonathan G. Katz, Secretary, Commission, dated December 16, 1999 (''Letter from Hayes''); and Steven Taylor to Jonathan G. Katz, Secretary, Commission, dated October 19, 1999 and to the Honorable Senators Mitch McConnell, Richard Durbin, and Peter Fitzgerald (forwarded to Arthur Levitt, Chairman, Commission), dated November 29, 1999, January 13, 2000, and February 13, 2000) (''Letters from Taylor'').

[24] *See* Letter from Liang.

[25] *See* Letter from Taylor.

[26] *See* Letters from Miller, Green, Desiderio, M. Mesirov, Wayne, Liang, and Elwell.

[27] *See* Letter from M. Mesirov.

[28] 15 U.S.C. 78f(b)(4).

[29] 15 U.S.C. 78f(b)(5).

[30] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

unfair discrimination between customers, issuers, brokers, or dealers.[31]

We note the concern expressed by several commenters that the Phlx financing plan treats owner-lessors unfairly and thus contravenes Sections 6(b)(4) and 6(b)(5) of the Act. These concerns, however, are addressed to the credit and not to the fee. As discussed above, the credit is currently being implemented on a six-month pilot basis; the Commission will consider the commenters' concerns in determining whether to approve the credit on a permanent basis. The Commission does not believe that these concerns apply to the fee, which is an across-the-board assessment against all seat owners. Thus, the fee does not appear to raise concerns about unfair treatment of owner-lessors under the Act.

Other commenters contend that the proposed fee is unnecessary and excessive. The Exchange represents that to compete in the current capital market environment, the Exchange needs funding to make technological and capital improvements, and that the revenues raised from this fee will be used to fund those technological and capital improvements. The Exchange also represents that the owners of the 505 memberships on the Exchange benefit both from the value of their seats and from doing business on the Exchange's facilities (either directly or through agents or lessees who pay fees to owners). The Commission finds these representations to be persuasive. The rapid changes occurring in the options markets, including the trend towards greater automation of trading and increased competition among options markets—as evidenced by the move last fall to multiply trade options previously traded by only one exchange and the commencement of operations by the International Securities Exchange—have put pressure on all markets to evolve and compete. The Phlx believes that it needs this capital funding fee to make technological and capital improvements in this competitive environment, and the Commission sees no reason to second-guess the decision of the Phlx's properly constituted Board of Governors. Accordingly, the Commission finds that this proposed fee is reasonable and, as stated above, is equitably allocated.[32]

The Commission is not required under Section 19(b)(2) of the Act to find that a proposed rule change by a self-regulatory organization is lawful under state corporation law; in approving this proposal, the commission is relying on the Phlx's representation that it has the general power under applicable provisions of Delaware law to assess a fee on the owners of Exchange seats, and that the capital funding fee is an appropriate exercise of that power. The Commission has not independently evaluated the accuracy of Phlx's representations about Delaware law.

In addition, the Commission funds good cause for approving Amendment No. 1 to the proposal prior to the thirtieth day after the date of publication of notice and filing thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[33] Amendment No. 1 does not fundamentally change the operation or scope of the capital funding fee; matters such as who will be subject to the fee, the amount of the fee, and when the fee will be charged remain unchanged by Amendment No. 1. Instead, Amendment No. 1 provides additional representations and justification concerning the Phlx's authority to assess the fee on seat owners under applicable provisions of Delaware law. Further, the capital funding fee has been operational on a pilot program basis. That pilot program expires on July 6, 2000. Absent approval of Amendment No. 1, the Phlx's ability to collect the fees would lapse because the pilot program will expire. In view of the Commission's finding that the proposed rule change is consistent with the Act, it believes that the Phlx should be able to assess this fee on an uninterrupted basis so that it may raise the revenue it needs to make technological and capital improvements.

In the Commission's view, Amendment No. 1 constitutes appropriate and necessary justification for the proposed rule change, but raises no new or novel issues under the federal securities laws. Accordingly, the Commission finds good cause, consistent with Sections 6(b)(4),[34] 6(b)(5),[35] and 19(b)(2)[36] of the Act to accelerate approval of Amendment No. 1 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning whether Amendment No. 1 to the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–51 and should be submitted by July 31, 2000.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–Phlx–99–51) is approved and that Amendment No. 1 to the proposed rule change is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17335 Filed 7–7–00; 8:45 am]

BILLING CODE 8010–01–M

[31] 15 U.S.C. 78f(b)(4), (b)(5).

[32] *See* 15 U.S.C. 78f(b)(4). The Commission has separately considered whether seat owners are ''members'' or ''other persons using [the] facilities [of the Exchange]'' under Section 6(b)(4) of the Act. 15 U.S.C. 78f(b)(4). Not all seat owners are ''members'' under Section 3(a)(3) of the Act or under Exchange Rules. *See* 15 U.S.C. 78c(a)(3); Phlx Certificate of Incorporation, Article 20 and Phlx Rules of Board of Governors, Rules 3, 5, 17, and 18; and telephone conversation between Marla Chidsey, Attorney, Division of Market Regulation, Commission, and Bob Ackerman, Senior Vice President, Chief Regulatory Officer, Phlx (January 5, 2000). If seat owners are not ''members'' of the Exchange, they may be ''other persons using [the] facilities [of the Exchange].'' If so, the Commission believes Phlx's proposal equitably allocates the capital funding fee by assessing the fee against all seat owners across-the-board. If, on the other hand, seat owners are not ''other persons using [the] facilities [of the Exchange],'' the Commission is not required under Section 6(b)(4) of the Act to find that the capital funding fee is equitably allocated. 15 U.S.C. 78f(b)(4). Under either analysis, the capital funding fee is consistent with the Act.

[33] 15 U.S.C. 78s(b)(2).

[34] 15 U.S.C. 78f(b)(4).

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78s(b)(2).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of open meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold an open meeting on July 17, 2000, from 9:30 a.m. to 3:20 p.m.

DATES: The meeting is scheduled for July 17, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce, Room 3884, located at 14th Street and Constitution Avenue, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg or Cory Churches, Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230, (202) 482–4792 or Emory Mayfield, Office of the United States Trade Representative, 1724 F St., NW., Washington, DC 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC–14 will hold an open meeting on July 17, 2000, from 9:30 a.m. to 3:20 p.m. Agenda topics to be addressed will be:

1. A Security Briefing for current and new members.

2. An Ethics Briefing for current and new members.

3. A briefing on new Carousel Legislation.

4. A briefing on implementation of infrastructure to monitor China's compliance with agreements.

5. A briefing by the Bureau of Economic Analysis regarding the survey on services export figures.

6. A briefing by the U.S. Trade Representative's WTO Services negotiator regarding developments in the WTO services agreement.

7. Committee Business.

Dominic Bianchi,

Acting Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 00–17183 Filed 7–7–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Trade and Environment Policy Advisory Committee (TEPAC)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the July 6, 2000, meeting of the Trade and Environment Policy Advisory Committee will be held from 8:30 a.m. to 12 noon. The meeting will be closed to the public from 8:30 a.m. to 11:30 a.m. and open to the public from 11:30 a.m. to 12 noon.

SUMMARY: The Trade and Environment Policy Advisory Committee will hold a meeting on July 6, 2000 from 8:30 a.m. to 12 noon. The meeting will be closed to the public from 8:30 a.m. to 11:30 a.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 11:30 a.m. to 12 noon, when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for July 6, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the USTR ANNEX Building in Conference Rooms 1 and 2, located at 1724 F Street, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Christina Sevilla, Office of the United States Trade Representative, (202) 395–6120.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 00–17374 Filed 7–6–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Announcement of Receipt of Notice of Proposed Restriction on Stage 2 Operations at Naples Municipal Airport, Naples, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Restriction on Stage 2 Operations.

The Federal Aviation Administration (FAA) has been notified by the Naples Municipal Airport that it proposes to prohibit operations by aircraft certificated as Stage 2 under the Federal Aviation Regulations (FAR) Part 36. The Naples Municipal Airport has provided notice of the proposed restriction and an opportunity to comment to the public pursuant to the Airport Noise and Capacity Act of 1990 and 14 CFR Part 161.

In its published notice scheduled to be printed on June 30, July 10 and August 13, 2000, in the Naples Daily News and the FT. Myers News Press, the Naples Municipal Airport proposes to prohibit all Stage 2 jet aircraft operations effective January 1, 2001.

Further information, copies of the complete text of the proposed restriction, and copies of the supporting analysis may be obtained at the offices of the City of Naples Airport Authority, 160 Aviation Drive North, Naples, Florida 34104–3568 during regular business hours.

Comments on the proposed restriction may be submitted to: City of Naples Airport Authority, ATTN: Lisa LeBlanc-Hutchings, 160 Aviation Drive North, Naples, Florida 34104–3568, Email: administration@flynaples.com, FAX (941) 643–4084.

All comments must be received by August 21, 2000, to be considered.

Issued in Orlando, Florida on June 30, 2000.

John W. Reynolds, Jr.

Acting Manager, Orlando Airports District Office.

[FR Doc. 00–17379 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 192; National Airspace Review Planning and Analysis

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice

is hereby given for a Special Committee 192 meeting to be held July 18, 2000, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Welcome and Introductory Remarks; (2) Review/Approval of Meeting of Previous Plenary Minutes; (3) Discuss Document Comment Form on Working Group 3 (User Recommendations on FAA Order 7400.2—Procedures for Handling Airspace Matters) Product and Reach Final Product Approval Consensus; (4) Discuss Document Comment Form on Working Group 2 (Special-Use Airspace in National Airspace Redesign) Product and Reach Final Product Approval Consensus; (5) Discuss Document Comment Form on Working Group 1 (High Altitude Procedures for Handling Airspace Matters) Product and Reach Final Product Approval Consensus; (6) Date and location of Next Meeting; and (7) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; (202) 833–9339 (phone), (202) 833–9434 (fax), or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 3, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–17381 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Okaloosa Regional Airport, Eglin AFB, Valpairaiso, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Okaloosa Regional Airport, Eglin AFB, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 9, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jerry Sealy, Airport Director of the Okaloosa Regional Airport, Eglin AFB at the following address: Okaloosa Regional Airport, State Road 85, Eglin AFB, FL 32542–1413.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Okaloosa County under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Bud Jackman, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024, (407) 812–6331, x22. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Okaloosa Regional Airport, Eglin AFB, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).]

On June 30, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Okaloosa County, Florida was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 18, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–01–C–00–VPS.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 2000.

Proposed charge expiration date: May 14, 2028.

Total estimated net PFC revenue: $38,358,314.

Brief description of proposed project(s):

Project VPS001: Terminal Bldg. Renovation & Expansion
Project VPS002: Terminal Aircraft Apron Expansion
Project VPS003: Widen Taxiway D–1
Project VPS004: Construct Taxiway D–2
Project VPS005: Expand Terminal Access Roadway
Project VPS006: PFC Program and Administration Costs

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Charter Operators, primarily military-related charters that (1) do not enplane or deplane passengers at the airport's main passenger terminal building and (2) enplane less than 500 passengers per year at the airport. This class of carriers represents less than 1% of total passengers enplaned annually as recorded on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Okaloosa County, Florida.

Issued in Orlando, Florida on June 30, 2000.

John W. Reynolds, Jr.,

Acting Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 00–17380 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Hardy County, West Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that it is revising the original notice of intent published in the **Federal Register** on September 30, 1996 (Volume 61, Number 190, Pages 51135–51136). The original notice stated that an environmental impact statement would be prepared for a proposed Moorefield transportation Improvement Project in Hardy County, West Virginia. After further analysis, it has been determined there will be no significant environmental impacts and the appropriate NEPA document would be an environmental assessment.

FOR FURTHER INFORMATION CONTACT: Henry E. Compton, Division Environmental Coordinator, Federal Highway Administration, West Virginia Division, Geary Plaza, Suite 200, 700

Washington Street East, Charleston, West Virginia, 25301, Telephone: (304) 347–5268

SUPPLEMENTARY INFORMATION: In lieu of preparation of an environmental impact statement, the FHWA, in cooperation with the West Virginia Division of Highways (WVDOH), will prepare an environmental assessment for the proposed Moorefield Transportation Improvement Project. The project is proposed to relieve traffic congestion associated with heavily industrialized areas within and surrounding the downtown area of Moorefield. Alternatives under consideration include (1) taking no action; (2) improve the existing highway system by constructing a four lane, limited access highway on new location.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have expressed or are known to have an interest in this proposal. An additional public meeting will be held in Moorefield when appropriate. Public notice will be given of the time and place of the meeting. An environmental assessment will be available for public and agency review and comment prior to the public meeting.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited. Comments or questions concerning this proposed action or the modification of environmental document type should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: June 30, 2000.

Henry E. Compton,

Environmental Coordinator, Charleston, West Virginia.

[FR Doc. 00–17369 Filed 7–7–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 202X)]

Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Mecklenburg County, NC

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over a 1.1-mile line of railroad under lease with the North Carolina Railroad Company (NCRC) between Station 11110+45 and Station 11158+29, in Charlotte, Mecklenburg County, NC. The line traverses United States Postal Service Zip Codes 28209 and 28227.[1]

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 9, 2000,[2] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] must be filed by July 20, 2000. Petitions to reopen must be filed by July 31, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 29, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–17241 Filed 7–7–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The lease was executed in 1895 by NCRR and Southern Railway Company (NS's predecessor). *See Norfolk Southern Railway Company and Atlantic and East Carolina Railroad Company—Lease and Operation Exemption—North Carolina Railroad Company,* Finance Docket No. 32820 (ICC served Dec. 22, 1995).

Through a transaction that was the subject of a notice of exemption, The City of Charlotte, North Carolina (City) proposed to acquire from the North Carolina Railroad Company a 1.1-mile line of railroad. The City simultaneously filed a motion to dismiss the notice of exemption. The City purchased the 1.1-mile line of railroad and the notice of exemption was dismissed for lack of jurisdiction. *See City of Charlotte, North Carolina—Acquisition Exemption—Certain Assest of the North Carolina Railroad Company,* STB Finance Docket No. 33529 (STB served Dec. 29, 1997, and Feb. 24, 1998).

A Board staff member consulted with NS's representative concerning the mileage stated in its verified notice. On June 23, 2000, NS informed the Board that it is its view that the line conveyed to the City is the same line for which the discontinuance authority is being requested and that, recognizing the possibility that approximations might have been used in the past, track realignments might have changed the mileage, or that an outdated reference might have been used, while it cannot account for the length of the line stated in its notice, it does not object to describing the line as 1.1 miles in length, instead of 0.91-mile in length, as stated in its verified notice.

[2] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required under 49 CFR 1105.6(b)(3) and (c)(5).

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. See 49 CFR 1002.2(f)(25).

Federal Register

Monday,
July 10, 2000

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 223

Endangered and Threatened Species; Salmon and Steelhead; Final Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 991207324–0148–02; I.D. 081699C]

RIN 0648–AK94

Endangered and Threatened Species; Final Rule Governing Take of 14 Threatened Salmon and Steelhead Evolutionarily Significant Units (ESUs)

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

ACTION: Final rule.

SUMMARY: Under section 4(d) of the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. NMFS now issues a final ESA 4(d) rule adopting regulations necessary and advisable to conserve fourteen listed threatened salmonid ESUs. This final rule applies the prohibitions enumerated in section 9(a)(1) of the ESA to one coho salmon ESU, three chinook salmon ESUs, two chum salmon ESUs, one sockeye salmon ESU and seven steelhead ESUs. NMFS does not find it necessary and advisable to apply the take prohibitions described in section 9(a)(1)(B) and 9(a)(1)(C) to specified categories of activities that contribute to conserving listed salmonids or are governed by a program that adequately limits impacts on listed salmonids. This final rule includes 13 such limits on the application of the ESA section 9(a)(1) take prohibitions.

DATES: Effective September 8, 2000. Applicability dates: In § 223.203 for the Snake River Basin, Lower Columbia River, Middle Columbia River, Upper Willamette River, Central Valley, California, Central California Coast, and South-Central California Coast steelhead ESUs, this final rule is applicable September 8, 2000. In § 223.203 for the Snake River spring/summer, Snake River fall, Puget Sound, Lower Columbia River and Upper Willamette River chinook, Oregon Coast, Central California Coast, and South/Central California Coast coho, Hood Canal summer-run and Columbia River chum, and Ozette Lake sockeye ESUs, this final rule is applicable January 8, 2001.

ADDRESSES: Branch Chief, NMFS, Northwest Region, Protected Resources Division, 525 NE. Oregon St., Suite 500, Portland, OR 97232–2737; Regional Administrator, Northwest Region, 7600 Sand Point Way, NE, BIN C15700, Building 1, Seattle, WA 98115–0070; Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; Regional Administrator, NMFS, Southwest Region, 501 West Ocean Blvd., Long Beach, CA 90802–4213; Salmon Coordinator, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at 503-231-2005 or Craig Wingert at 562–980–4021.

Electronic Access

Reference materials regarding this rule can also be obtained from the internet at www.nwr.noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1997, NMFS published a final rule listing the Snake River Basin (SRB), Central California Coast (CCC), and South/Central California Coast (SCCC) steelhead (*Onchorynchus mykiss*) ESUs as threatened species under the ESA (62 FR 43937). On March 19, 1998, NMFS published a final rule listing the Lower Columbia River (LCR) and Central Valley, California (CVC) steelhead ESUs as threatened species under the ESA (63 FR 13347). On March 25, 1999, NMFS published a final rule listing the Middle Columbia River (MCR) and Upper Willamette River (UWR) steelhead ESUs as threatened (64 FR 14517). Those final listing documents describe the background of the steelhead listing actions and provide summaries of NMFS' conclusions regarding the status of the listed steelhead ESUs. On August 10, 1998 (63 FR 42587), NMFS, on behalf of the Secretary, published a final rule listing the Oregon Coast (OC) ESU of coho salmon (*Oncorhynchus kisutch*, or *O. kisutch*) as threatened. By a final rule published on March 24, 1999 (64 FR 14308), NMFS listed as threatened the Puget Sound (PS), Lower Columbia River (LCR) and Upper Willamette River (UWR) ESUs of west coast chinook salmon (*Oncorhynchus tshawytscha*, or *O. tshawytscha*) in Washington and Oregon. By a final rule published on March 25, 1999 (64 FR 14508), NMFS listed as threatened the Hood Canal Summer-run (HCS) and Columbia River (CR) chum salmon ESUs (*Oncorhynchus keta*, or *O. keta*) in Washington and Oregon. By a final rule published on March 25, 1999 (64 FR 14528), NMFS listed as threatened the Ozette Lake ESU of sockeye salmon (*Oncorhynchus nerka*, or *O. nerka*) in Washington. Those final rule listing notifications describe the background of the listing actions and provide a summary of NMFS' conclusions regarding the status of the threatened coho, chinook, chum, and sockeye salmon ESUs.

Section 4(d) of the ESA provides that whenever a species is listed as threatened, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of the species. Such protective regulations may include any or all of the prohibitions that apply automatically to protect endangered species under ESA section 9(a)(1). Those section 9(a)(1) prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as endangered, without written authorization. It is also illegal under ESA section 9(a)(1) to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Section 11 of the ESA provides for civil and criminal penalties for violation of section 9 or of regulations issued under the ESA.

Whether section 9(a)(1) prohibitions or other protective regulations are necessary and advisable is in large part dependent upon the biological status of the species and potential impacts of various activities on the species. These threatened species are likely to become endangered species within the foreseeable future. Their current threatened status cannot be explained by natural cycles in ocean and weather conditions. NMFS has concluded that threatened chinook, coho, chum, sockeye, and steelhead are at risk of extinction primarily because their populations have been reduced by human ''take''. West Coast populations of these salmonids have been depleted by take resulting from harvest, past and ongoing destruction of freshwater and estuarine habitats, hydropower development, hatchery practices, and other causes. ''Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead'' (NMFS, 1996) and ''Factors Contributing to the Decline of Chinook Salmon: An Addendum to the 1996 West Coast Steelhead Factors for Decline Report'' (NMFS, 1998)

concludes that all of the factors identified in section 4(a)(1) of the ESA have played some role in the decline of the species. It is necessary and advisable then to apply the ESA section 9(a)(1) prohibitions to these listed ESUs, in order to provide for their conservation.

These listings have created a great deal of interest among states, counties, and others in adjusting their programs that may affect the listed species to ensure they are consistent with salmonid conservation. Although the primary purpose of state, local, and other programs is generally to further some activity other than conserving salmon, such as maintaining roads, controlling development, ensuring clean water or harvesting trees, some entities have adjusted one or more of these programs to protect and conserve listed salmonids. NMFS believes that with appropriate safeguards, many such activities can be specifically tailored to minimize impacts on listed threatened salmonids to an extent that makes additional Federal protections unnecessary for conservation of the listed ESU.

NMFS, therefore, proposes a mechanism whereby entities can be assured that an activity they are conducting or permitting is consistent with ESA requirements and avoids or minimizes the risk of take of listed threatened salmonids. When such a program provides sufficient conservation for listed salmonids, NMFS does not find it necessary and advisable to apply ESA section 9(a)(1) take prohibitions to activities governed by those programs. In those circumstances (see descriptions to follow), additional Federal ESA regulation through imposing the take prohibitions is not necessary and advisable because it would not enhance the conservation of the listed ESUs. In fact, declining to apply take prohibitions to such programs likely will result in greater conservation gains for a listed ESU than would blanket application of section 9(a)(1) prohibitions, through the program itself and by demonstrating to similarly situated entities that practical and realistic salmonid protection measures exist. NMFS will monitor the activities under a program where NMFS has granted a ''limit'' on the application of the ESA take prohibitions for unexpected harm, as well as for harmful activities resulting in take that do not obey the requirements of the limit and, therefore, are subject to NMFS ESA enforcement. An additional benefit of this approach is that NMFS can focus its enforcement efforts on activities and programs that have not yet adequately addressed the conservation needs of listed ESUs.

Substantive Content of Final Regulation

NMFS had previously proposed protective regulations for three of the salmonid ESUs subject to this final rule. When NMFS first proposed the Oregon Coast coho for listing (60 FR 38026, July 25, 1995), it proposed to apply the prohibitions of ESA section 9(a)(1) to that ESU. When NMFS first proposed the LCR and SRB steelhead ESUs for listing (61 FR 41541, August 9, 1996), it also proposed to apply the prohibitions of ESA section 9(a)(1) to those ESUs. These proposed protective regulations, however, were never finalized. NMFS has since proposed application of the section 9(a)(1) prohibitions for seven listed steelhead ESUs (64 FR 73479, December 30, 1999), and seven listed salmonid ESUs (65 FR 170, January 3, 2000). This final rule applies the prohibitions of ESA section 9(a)(1) to all 14 listed ESUs.

NMFS concludes that the prohibitions generally applicable for endangered species are necessary and advisable for conservation of these listed ESUs. Additionally, NMFS determines that section 9(a)(1) prohibitions on listed salmonids in the 14 listed ESUs need not be applied when it results from a specified subset of activities described herein. These are activities that are conducted in a way that contributes to conserving the listed ESUs and where NMFS determines that added protection through Federal regulation is not necessary and advisable for conservation of an ESU. Therefore, NMFS will now apply ESA section 9(a)(1) prohibitions to these 14 threatened salmonid ESUs, but will not apply the take prohibitions to the 13 programs described in this document as meeting that level of protection. Of course, the entity responsible for any habitat-related programs might equally choose to seek an ESA section 10(a)(1)(b) permit, or be required to satisfy ESA section 7 consultation if Federal funding, management or approval is involved. This final rule does not impose restrictions beyond those applied in other sections of the ESA, but provides another option beyond the section 7 and 10 tools to authorize incidental take.

Working with state and local jurisdictions and other resource managers, NMFS has identified 13 programs and criteria for future programs for which it is not necessary and advisable to impose ESA section 9(a)(1) prohibitions because they contribute to conserving the ESU. Under specified conditions and in appropriate geographic areas, these programs and criteria include: (1) activities conducted in accord with ESA incidental take authorization; (2) ongoing scientific research activities, for a period of 6 months from the publication of this final rule; (3) emergency actions related to injured, stranded, or dead salmonids; (4) fishery management activities; (5) hatchery and genetic management programs; (6) activities in compliance with joint tribal/state plans developed within *United States* (U.S.) v. *Washington* or *U.S.* v. *Oregon*; (7) scientific research activities permitted or conducted by the states; (8) state, local, and private habitat restoration activities; (9) properly screened water diversion devices; (10) routine road maintenance activities; (11) certain park pest management activities; (12) certain municipal, residential, commercial, and industrial (MRCI) development and redevelopment activities; and (13) forest management activities on state and private lands within the State of Washington. The language which follows describes each limit. These are programs or criteria for future programs where NMFS will limit the application of the section 9(a)(1) prohibitions. More comprehensive descriptions of each limit and discussions regarding the scientific basis for this final rule are contained in ''A Citizen's Guide to the 4(d) Rule'' (NMFS, 2000). In the future, NMFS anticipates adding new limits for more activities that are deemed necessary and sufficient for the conservation of the species.

NMFS emphasizes that these limits are not prescriptive regulations. The fact of not being within a limit does not mean that a particular action necessarily violates the ESA or this regulation. Many activities do not affect these species, and thus, need not be included in the 13 limits listed earlier. The limits describe circumstances in which an entity or actor can be certain it is not at risk of violating the take prohibitions or of consequent enforcement actions, because the take prohibitions would not apply to programs or activities within those limits. Jurisdictions, entities, and individuals are encouraged to evaluate their practices and activities to determine the likelihood of take occurring. NMFS can provide ESA coverage through section 4(d) rules, section 10 research and enhancement permits, or incidental take permits; or through section 7 consultations with Federal agencies. If take is likely to occur, then the jurisdiction, entity or individual should modify its practices to avoid take of a threatened species or seek protection from potential ESA

liability through section 7, section 10, or section 4(d) processes.

Jurisdictions, entities, and individuals are not required to seek inclusion in a section 4(d) limit from NMFS. In order to reduce its liability, a jurisdiction, entity, or individual may also informally comply with a limit by choosing to modify its programs to be consistent with the evaluation considerations described in an individual limit. Finally, a jurisdiction, entity, or individual may seek to qualify its plans or ordinances for inclusion in a limit by obtaining the 4(d) limit authorization from the appropriate NMFS Regional Administrator (see **ADDRESSES**).

NMFS wishes to continue to work collaboratively with all affected jurisdictions, entities, and individuals to recognize management programs that conserve and meet the biological requirements of salmonids, and to strengthen other programs toward conservation of listed salmonids. This final rule may be amended to add new limits on the take prohibitions, or to amend or delete limits as circumstances warrant.

State, county and local efforts such as Clark, Cowlitz, Kitsap, the Puget Sound Tri-County Initiative in Washington state; and the City of Portland and Clackamas County in Oregon are working with NMFS to make their ordinances and practices fish friendly and to be adopted in future 4(d) rulemaking. NMFS also acknowledges the important progress being made by Metro, the directly-elected regional government in Portland, Oregon. NMFS is enthusiastic about Metro's current planning efforts and encourages its progress in regional planning to address salmonid conservation.

NMFS acknowledges, and is participating in, the State of Washington's Agricultural, Fish, and Water negotiation process currently underway in Washington State. The process currently underway is intended to address the requirements of the ESA and the Clean Water Act (CWA). The negotiations are designed to address agricultural practices and processes including but not limited to: Field Office Technical Guides (FOTGs), Comprehensive Irrigation District Management Plans (CIDMP), Ditch Maintenance Plans (DMPs) and Pesticide Management as needed to comply with ESA and CWA. It is anticipated that completed FOTGs, CIDMPs, DMPs, and Pesticide Management, if acceptable to NMFS, will be included in future ESA 4(d) rulemaking.

NMFS strongly encourages comprehensive conservation planning for programs at the state level. State level conservation programs can be one of the most efficient methods to implement effective conservation practices across the board and achieve comprehensive benefits for listed fish and their habitats. Other examples of these state-based conservation programs include the completed forestry agreement in Washington state; ongoing reviews of Oregon and California forestry practices; and development of coastal states' shoreline management programs. NMFS is working with Washington State Department of Ecology on development of a model shoreline program. Alternatively, a local jurisdiction seeks inclusion in a limitation of the take prohibition by adopting this model program, NMFS expects to address the potential ''take'' issues associated with the shorelines program through an ESA section 7 consultation with the National Ocean Service in the coming months. This may obviate the need for a 4(d) limit for shoreline-related activities under the authority of the Department of Ecology.

Concurrent with this final rule, NMFS is publishing a final rule describing a limit on the section 9(a)(1) prohibitions for actions in accord with any tribal resource management plan that the Secretary has determined will not appreciably reduce the likelihood of survival and recovery of a threatened ESU (published elsewhere in this **Federal Register** issue).

Following is a section entitled ''Notice of Availability'' which lists seven documents referred to in the regulation. The purpose of making these documents available to the public is to inform governmental entities and other interested parties of the technical components NMFS expects to be addressed in programs submitted for its review. These technical documents provide guidance to entities as they consider whether to submit a program for a 4(d) limit. The documents represent several kinds of guidance, and are not binding regulations requiring particular actions by any entity or interested party.

For example, NMFS' Viable Salmonid Policy (VSP) paper referenced in the fishery and harvest management limits provides a framework for identifying populations and their status as a component of developing adequate harvest or hatchery management plans. This rule asks that FMEPs and HGMPs ''utilize the concepts of 'viable' and 'critical' salmonid population thresholds, consistent with the concepts contained in the [VSP paper].'' Thus, state fishery agencies preparing such programs are put on notice of the technical analysis needed to support decisions within a program. Similarly, NMFS' Fish Screening Criteria explicitly recognize that they are general in nature and that site constraints or particular circumstances may require adjustments in design, which must be developed with the NMFS staff member, or authorized officer, to address site specific considerations and conditions. Finally, research involving electrofishing comes within the scientific research limit only if conducted in accordance with NMFS' Guidelines for Electrofishing. The guidelines recognize that other techniques may be appropriate in particular circumstances, and NMFS can recognize those as appropriate during the approval process.

Of the state or local documents referenced in the rules, two (Oregon Department of Transportation's (ODOT) road maintenance program to govern routine maintenance activities and Portland Parks' integrated pest management program) are existing programs already being implemented that NMFS has found adequate and made effective as limits. Those entities, thus, need no further approval for the programs. Other jurisdictions may come within the road maintenance limit if they use the ODOT program or provide other practices found by NMFS to be equivalent or more protective of salmonids. The State of Washington's Forests and Fish Report will not trigger a limit until the Washington Board of Forestry adopts regulations that NMFS finds are at least as protective as the report. Thus, the report indicates a set of conditions that will allow NMFS to approve the limit, but recognizes that the Board may design regulations that are not identical to, but are at least as protective as, the report language.

In sum, where the rule cites a document, a program's consistency with the guidance is ''sufficient'' to demonstrate that the program meets the particular purpose for which the guidance is cited. However, the entity or individual wishing a program to be accepted as within a particular limit has the latitude to show that its variant or approach is, in the circumstances where it will apply and affect listed fish, equivalent or better.

NMFS will continue to review the applicability and technical content of its own documents as they are used in the future and make revisions, corrections or additions as needed. NMFS will use the mechanisms of the rule to take comment on revisions of any of the referenced state programs. If any of

these documents is revised and NMFS relies on the revised version to provide guidance in continued implementation of the rule, NMFS will publish in the **Federal Register** a notice of its availability stating that the revised document is now the one referred to in the specified 223.203(b) subsection.

Notice of Availability

The following is a list of documents cited in the regulatory text of this final rule. Copies of these documents may be obtained upon request (see **ADDRESSES**).

1. Oregon Department of Transportation (ODOT) Maintenance Management System Water Quality and Habitat Guide (June, 1999).
2. City of Portland, Oregon Parks and Recreation Department Pest Management Program (March 1997) with Waterways Pest Management Policy updated December 1, 1999.
3. State of Washington, Forests and Fish Report (April 29, 1999).
4. Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act (NMFS, 2000a).
5. Juvenile Fish Screen Criteria, National Marine Fisheries Service, Northwest Region, Revised February 16, 1995, with Addendum of May 9, 1996.
6. Fish Screening Criteria for Anadromous Salmonids (January 1997).
7. Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units. (NMFS, 2000b).

Copies of all references, reports, related documents and ''A Citizen's Guide to the 4(d) Rule'' (NMFS, 2000) are also available upon request (see **ADDRESSES**).

The limits on the take prohibitions do not relieve Federal agencies of their duty under section 7 of the ESA to consult with NMFS if actions they fund, authorize, or carry out may affect listed species. To the extent that actions subject to section 7 consultation are consistent with a circumstance for which NMFS has limited the take prohibitions, a letter of concurrence from NMFS will greatly simplify the consultation process, provided the program is still consistent with the terms of the limit.

Applicability to Specific ESUs

In the regulatory language in this final rule, the limits on applicability of the take prohibitions to a given ESU are accomplished through citation to the Code of Federal Regulations' (CFRs') enumeration of threatened marine and anadromous species, 50 CFR 223.102. For the convenience of readers of this notice, 50 CFR 223.102 refers to threatened salmonid ESUs through the following designations:

(a) (1) Snake River spring/summer chinook
(a) (2) Snake River fall chinook
(a) (3) Central California Coast coho
(a) (4) Southern Oregon/Northern California Coast coho
(a) (5) Central California Coast steelhead
(a) (6) South-Central California Coast steelhead
(a) (7) Snake River Basin steelhead
(a) (8) Lower Columbia River steelhead
(a) (9) Central Valley, California steelhead
(a) (10) Oregon Coast coho
(a) (12) Hood Canal summer-run chum
(a) (13) Columbia River chum
(a) (14) Upper Willamette River steelhead
(a) (15) Middle Columbia River steelhead
(a) (16) Puget Sound chinook
(a) (17) Lower Columbia River chinook
(a) (18) Upper Willamette River chinook
(a) (19) Ozette Lake sockeye

Summary of Comments in Response to the Proposed Rules

Between January 10, 2000, and February 22, 2000, NMFS held 25 public hearings to solicit comments on the proposed ESA 4(d) rules: 7 in Washington, 8 in Oregon, 3 in Idaho, and 7 in California (64 FR 73479, December 30, 1999; 65 FR 170, January 3, 2000; 65 FR 7346, February 14, 2000; 65 FR 7819, February 16, 2000). During the 65-day public comment period, NMFS received 1,146 written comments on the proposed rules from Federal, state, and local government agencies; Indian tribes; non-governmental organizations; the scientific community; and individuals. In addition, numerous individuals provided oral testimony at the public hearings.

Based on these public hearings and comments, NMFS now issues its final protective regulations for these 14 salmon and steelhead ESUs. The preamble section of this rule refers to the prohibitions of ESA section 9(a)(1). In addition to the commonly referred to take prohibitions of section 9(a)(1)(B) and 9(a)(1)(C), section 9(a)(1), also includes prohibitions on the import, export, sale, delivery, or transport in interstate commerce of endangered species. The public comments NMFS received almost exclusively focused on the section 9 take prohibitions. The following comments and responses, therefore, refer to the ''take'' prohibitions of section 9(a)(1)(B) and 9(a)(1)(C), not to the other prohibitions described in section 9(a)(1). Accordingly, for the rest of this preamble and in the regulation, the term ''prohibition'' refers to the prohibition of take within the 13 specified limits.

New information and a summary of comments received in response to the proposed rules are summarized as follows.

Comments and Responses

Take Guidance

Comment 1: Some commenters stated that a primary focus of the proposal was to encourage development of local tailor-made measures that protect salmonids and they requested further guidance on how their programs could be included in future ESA 4(d) rules.

Response: Credible local initiatives are indeed needed to help save these species, and guidance on how local programs can be included in 4(d) rules is available in *The ESA and Local Governments: Information on 4(d) Rules, May 7, 1999*. In addition, NMFS staff will be available to offer advice and otherwise help individual jurisdictions and entities ensure that their actions do not take listed fish.

Comment 2: Some commenters wanted a simplified process (e.g., a ''letter of approval'' from NMFS staff) for including local programs in future ESA 4(d) rules.

Response: NMFS worked with state and local authorities to identify several categories of activities where local programs can be certified to comply with ESA requirements if they meet the conditions described in the rule. This simplified process would be available for land-use development activities, water diversion screening, road maintenance, hatchery operations, fisheries harvest, fisheries related research, and habitat restoration activities. Other governmental entities are encouraged to step forward and work with NMFS. First, to ensure that local programs meet the salmon's biological requirements and the mandates of the ESA, and second, to streamline the administration of any program.

Comment 3: A number of commenters stated that the proposed take guidance was too vague (e.g., guidance in the limit for new urban density development). Others commented that the guidance was too prescriptive, and still others stated that the guidance was less stringent for some categories of activities and more stringent for others.

Response: To be approved for a limit from ESA take prohibitions, a program

must conserve salmon and meet their biological requirements. This criterion is the same for all programs. These species span the entire west coast from coastal rainforests to arid inland areas to high mountain regions nearly a thousand miles from the ocean and, thus, specific requirements will naturally differ from place to place. Some jurisdictions have asked for NMFS' help in learning how to avoid or limit adverse impacts on these species. General guidance is provided in this rule. This final 4(d) rule addresses concerns about vague guidance by providing additional specificity and by requiring that once specific programs designed to meet NMFS' criteria are produced (and before determining whether they are adequate), NMFS will publish the proposed program for review and comment.

Comment 4: Some commenters stated that NMFS must wait to apply take prohibitions until more specific guidance is published on how other programs can qualify for a limit on the take prohibitions. Others requested that NMFS delay take prohibitions until many more local programs were ready to be included in an ESA 4(d) rule, or that NMFS phase in the take prohibitions as programs qualify for a limit.

Response: These species are, by definition, likely to become endangered in the foreseeable future and undue delay in protecting them would likely increase the difficulty and expense of recovering them. At the same time, NMFS recognizes these rules are novel and complicated and some time is needed for regulated parties to better understand them. NMFS has balanced these considerations by adopting a final rule that puts needed regulations in place within 60 days for the steelhead ESUs and within 180 days for the salmon ESUs, which allows a reasonable period before they become effective (6 months).

Comment 5: A few commenters wanted NMFS to grant a grace period from the take prohibitions to those jurisdictions making good faith efforts to conserve the species.

Response: The proposed rule already states that while enforcement may be initiated against activities that take protected salmonids, NMFS' clear preference is to work with persons or entities to promptly shape their programs and activities to include credible and reliable conservation measures.

Comment 6: Some commenters asked NMFS to apply prohibitions against take to all programs without exception.

Response: Any jurisdiction or individual under United States authority is subject to the take prohibitions. Jurisdictions or individuals wanting assurance that an activity they are conducting or permitting is consistent with ESA requirements can be covered under a section 7 consultation (if Federal funding, authorization, or management is involved), seek an ESA section 10 permit, or qualify for a limit under a 4(d) rule. To qualify for any of these options, the activity must show that it sufficiently conserves the listed species.

Comment 7: Some commenters wanted NMFS to define the action types and magnitudes that would constitute illegal take. Others held that the array of activities described in the proposed rule that are ''likely to injure or kill listed salmonids'' was overly inclusive and discussed actions that exceeded NMFS' authority to regulate. Still others requested that NMFS assert that state and local governments are not required to use their regulatory authorities to satisfy ESA requirements.

Response: It is NMFS' policy to increase public awareness of and identify those activities that would or would not likely injure or kill a protected species. Take guidance appearing at the end of this document does just that. It is only possible in this final rule to describe categories of actions that may have adverse impacts on fish and describe their consequences (e.g., blocking fish from reaching their spawning grounds, dewatering incubating eggs, etc.). NMFS understands that there is considerable interest in knowing as much as possible about what constitutes ''take'' and changes have been incorporated in this final rule to accommodate this interest. Determining whether an individual local program or activity is likely to injure or kill a protected species will require credible assessments that take into account local factors and conditions. Regarding the issue of authority, regulations against killing or injuring protected species apply to any person subject to the jurisdiction of the United States (section 9(a)(1) of the ESA). The term ''person'' means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; and State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States (ESA section 3(12)).

Comment 8: A few commenters requested that NMFS make clear that ''take'' prohibitions would not be violated unless a protected species were injured or killed, and that determinations of whether ''take'' is likely to occur will be handled on a case-by-case basis.

Response: The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, a listed species or to attempt to engage in any such conduct (ESA section 3(18)). The term ''harm'' refers to an act that actually kills or injures a protected species (64 FR 215 (November 8, 1999). Harm can arise from significant habitat modification or degradation where it actually kills or injures protected species by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering. After conducting a self- assessment to determine whether an activity is likely to ''take'' a listed species, persons or entities may choose to adjust their program to avoid take, or pursue ESA coverage through a section 10 permit, a section 7 consultation with Federal agencies, or through a 4(d) rule.

Comment 9: Commenters requested that adequate monitoring and oversight be required to ensure that programs included in an ESA 4(d) rule are effective.

Response: A program is incomplete without a mechanism to track its implementation and effectiveness. NMFS reiterates language in the proposed rule which states that for any program included in an ESA 4(d) rule, ''NMFS will evaluate on a regular basis the effectiveness of the program in protecting and achieving a level of salmonid productivity and/or habitat function consistent with the conservation of the listed salmonids.'' If a program does not meet its objectives, NMFS will work with the relevant jurisdiction to adjust the program accordingly. If the responsible entity chooses not to adjust the program accordingly, NMFS will publish notification in the **Federal Register** and announce that the program will no longer be free from ESA take prohibitions because it does not sufficiently conserve listed salmonids.

Comment 10: There were a number of requests for NMFS to grant limits on the take prohibitions to additional programs. Examples included, the Natural Resources Conservation Service's FOTGs, California's Lake and Streambed Alteration Program, Oregon Concrete and Aggregate Producer's suggestions for a limit focused on Department of Geology regulation, Washington's Tri-County initiative, and

The Oregon Plan for Salmon and Watersheds.

Response: The ESA 4(d) rule provides an option for state and other jurisdictions to assume leadership for species conservation at the state and local level over and above the conventional tools for processing state and local conservation planning under the ESA through section 7 consultations and section 10 permitting. NMFS is assembling all the Federal, tribal, state, and local programs needed to save salmonids and has offered to collaborate with any entity interested in this 4(d) option. NMFS is especially interested in state-level conservation efforts because state-level programs tailored to meet the needs of the listed stocks can be a very efficient and comprehensive method to provide for the conservation of listed stocks and their habitat. A number of state and local entities have stepped forward to work with NMFS and we are anxious to work with them. However, limits that were not outlined in the proposed rule for public comment will have to be dealt with in a future amendment.

Comment 11: Commenters requested that NMFS clarify that activities conducted pursuant to an approved state or Federal permit are free from the ESA section 9 take prohibitions.

Response: Activities conducted pursuant to an approved state or Federal permit are subject to take prohibitions. Individual programs can seek relief from any take liability through a section 7 consultation, a section 10 permit process, or a program approved under a 4(d) limit.

Comment 12: Commenters argued that the nature of some programs (e.g., road construction, gravel mining, water withdrawals, levee construction, and certain development) should disqualify them from consideration for limits on take prohibitions under an ESA 4(d) rule.

Response: Under the proposal, all programs must fulfill the same standard to be included in an ESA 4(d) rule (i.e., they must conserve the species and meet their biological requirements). The important issue here is that threatened salmonids need meaningful, practical, and reliable conservation measures. Some programs will naturally have more difficulty meeting that standard than others. The ESA 4(d) rule simply applies the take prohibitions and allows for the development and implementation of conservation measures.

Comment 13: Several commenters suggested that the use of pesticides and herbicides should be considered a resource management tool and, therefore, be included as a limit by NMFS in the 4(d) rule. Several commenters argued that the proposed take guidance violates the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and, thereby, trespasses unlawfully into Environmental Protection Agency (EPA) authorities and violates the take exemption provided for FIFRA-registered pesticides.

Response: NMFS acknowledges that some view the current use of pesticides as essential to successful commercial crop production on agricultural lands, certain types of habitat restoration projects, and dealing with invasive exotic species. NMFS does not currently have specific information on the potential effects on listed salmonids of the very large number of pesticide products currently in use. Accordingly, NMFS is not able to conclude that the otherwise lawful use of these products is sufficiently benign to warrant an explicit limitation of the take prohibition in this rule. NMFS, therefore, has not incorporated such a limit.

For the same reason, NMFS is also unable to make an affirmative finding that the otherwise-lawful use of these products may cause harm to listed salmonids in potential violation of this final rule.

NMFS will continue to conduct scientific research into the potential for adverse effects upon salmonids of a variety of pesticides. NMFS intends to work closely with EPA and state authorities which have primary responsibility for ensuring the proper use of these products under relevant Federal and state regulatory regimes. Should information come forward to suggest that the otherwise lawful use of a pesticide harms or injures listed salmonids and might be in violation of this rule, NMFS anticipates addressing the concern through a section 7 consultation with EPA, NRCS, or United States Fish and Wildlife Service (FWS) as appropriate, or corresponding discussions with responsible state authorities. NMFS prefers this approach rather than use its enforcement authorities against an individual applicator for the otherwise-lawful use of the pesticide. Similarly, if NMFS, with due consideration of any more restrictive state requirements for a pesticide's use, finds that a limitation on the prohibition against take for the use of selected pesticides is necessary and advisable for the conservation of listed salmonids, it may amend this rule accordingly. Through such a programmatic approach, NMFS believes that it will be able to achieve an orderly and comprehensive analysis of the use of pesticides and their effects on listed salmonids.

Comment 14: A few commenters argued that ESA Habitat Conservation Plans (HCPs) should not be free from take prohibitions under a 4(d) rule.

Response: A section 10 incidental take permit (issued after analyzing the accompanying habitat conservation plan) authorizes a specified level of take. Including incidental take permits in the first limit of this rule is, thus, consistent with the structure and intent of the ESA.

Comment 15: A few commenters requested that NMFS prescribe standards (temporary or otherwise) for agricultural activities to be included in an ESA 4(d) rule.

Response: Different entities (including agricultural interests) have expressed a strong preference for standards developed at the local level (not one-size-fits-all standards). The 4(d) rule was written to foster local interest and support tailor-made programs and NMFS stands ready to work with any interested entity in forging such standards. On the issue of agricultural practices in particular, NMFS is working with a number of agricultural entities to explore conservation practices which might contribute to the conservation of salmonids and their habitats, and is hopeful that these discussions will yield further details on proper conservation practices to help conserve salmon.

Comment 16: A few commenters asked NMFS to work closely with FWS to clarify each other's roles to establish universal standards that cover all listed species.

Response: The two services do work closely together on ESA implementation. For example, NMFS and FWS share identical definitions of ''harm'' and the proposed rule does state that ''as it evaluates any program against the criteria in this rule to determine whether the program warrants a limitation on take prohibitions, NMFS will coordinate closely with FWS regional staffs.'' This comment, however, is well taken and NMFS will continue to work closely with FWS to coordinate and streamline ESA implementation. NMFS notes that it is commonly requested to distinguish biological requirements of salmonids from biological requirements of other species (some under the jurisdiction of FWS).

Comment 17: Commenters asked NMFS to establish a funding mechanism (e.g., an escrow account) to support habitat restoration activities.

Response: Millions of dollars in Federal funding have been granted to

state programs that fund specific habitat restoration projects. NMFS will continue to support funding for these programs in the future.

Comment 18: Several commenters argued that current conditions are a result of past practices, not current practices. They believed that NMFS has failed to justify why the little remaining habitat is important to listed fish and failed to provide detailed scientific rationale to support the agency's contention that certain activities (e.g., urban development) result in take.

Response: NMFS disagrees. The list of examples in this final rule (see Take Guidance) as well as those provided in the proposed rule give general guidance on the types of current activities that are very likely to take threatened salmonids. While not exhaustive, this list was based on direct experience with managing salmonid populations in their natural environment and a thorough understanding of the scientific literature. The ESA listing process for these threatened salmonids has documented the decline of salmonid populations in the four western states and has identified the historic and current causes of these declines. The commenters correctly note that past practices have caused the decline of salmonid populations; however, current human activity can also kill or injure listed salmonids. Development and other human activities within riparian areas or elsewhere in the watershed alter the properly functioning condition of riparian areas. These activities can alter shading (and hence stream temperature), sediment transport and supply, organic litter and large wood inputs, bank stability, seasonal streamflow regimes, and flood dynamics. The natural functions of riparian areas and the ways in which human activities affect those processes and functions are described in the publication entitled ''An Ecosystem Approach to Salmonid Conservation'' (NMFS, 1996).

Comment 19: Some commenters requested maps of ''sensitive resource sites'' at a large scale so local jurisdictions that deal with small land parcels may use them. Some commenters stated that NMFS should focus on areas where redds or fish are actually present, not on general definitions such as ''spawning gravels.''

Response: NMFS acknowledges the value of producing maps that identify resource sites important for the different salmonid life cycle stages. NMFS will continue to work with state entities, local jurisdictions, co-managers and citizens to increase our knowledge of threatened salmonids. NMFS will also continue to increase its own capabilities for mapping resource areas and watersheds. Because there were so many comments requesting that NMFS identify which activities have a high likelihood of resulting in take and will be priorities for enforcement action, the take guidance has been revised to focus on high risk activities. The language referring to ''spawning gravels'' has, therefore, been removed.

Comment 20: One commenter requested that NMFS add the word ''intentional'' to clarify the take guidance regarding promotion of predator populations associated with habitat alterations.

Response: NMFS must respectfully disagree. Whether the action is intentional or unintentional, NMFS considers habitat alterations that promote predation on listed species to be undesirable. Such actions may in fact cause injury or harm to listed salmonids.

Comment 21: Several commenters recommended adding sediment discharge to the list of toxic chemicals and other pollutants that are very likely to injure or kill salmonids. Other commenters requested that NMFS clarify which chemicals and pollutants it is referring to in this section.

Response: NMFS refers to toxic chemicals or other pollutants being discharged or dumped and then gives examples by listing sewage, oil, gasoline, and others. Sedimentation from timber harvest and other land use activities may plug the interstitial spaces in gravel spawning areas reducing salmon egg survival during their incubation period as well as many other deleterious effects. Based on these comments and the fact that sediment discharge may harm listed salmonids by physically disturbing or blocking streambed gravels, NMFS added soil disturbances to the list of actions that are likely to kill or injure salmonids.

Comment 22: One commenter urged NMFS to add language in the activity category dealing with the chemical and pollutant discharge or dumping to recognize that take can also occur when these activities are carried out with a valid permit. Another commenter recommended that NMFS clarify which permits are considered ''valid,'' and one commenter stated that this potential ''take'' should only apply to waters supporting the listed salmonids.

Response: NMFS agrees that chemical and pollutant discharge may take listed fish whether or not there is a valid permit for the discharge. In order to clarify this point, NMFS has deleted the words ''particularly when done outside of a valid permit for the discharge'' from the take guidance. Regarding the suggestion that take prohibitions should only be applied to waters supporting listed salmonids, the take guidance applies throughout the ESU for the listed species whether or not there are salmonids present in individual rivers or streams.

Comment 23: One commenter noted that the introduction of non-native species likely to prey upon or displace listed species should be expanded to include non-native species that may adversely affect salmonid habitat.

Response: NMFS agrees that non-native species may alter salmonid habitat to such an extent that the habitat may no longer provide all the functions and characteristics that support listed salmonids. The take guidance language now reflects this suggestion.

Comment 24: Numerous commenters argued for language changes and refinements in the descriptions of actions that may injure or kill listed salmonids. The first suggestion is to expand the list of ways fish passage can be blocked to include human-induced physical, chemical, and thermal blockages.

Response: NMFS has revised the take guidance to address this comment and to clarify its enforcement priorities.

Comment 25: Several commenters suggested adding language to the list of activities ''very likely to injure or kill salmonids'' to address activities that further contribute to or maintain water quality impairments in those water bodies on the 303(d) list of the CWA.

Response: NMFS agrees that this is an important issue and that activities that degrade water quality or maintain degraded conditions can injure listed species. This issue is already addressed in the section on discharging or dumping toxic chemicals or other pollutants into water or riparian areas and in the language changes discussed in the previous comment.

Comment 26: Some commenters urged NMFS to state that water withdrawals can affect salmonids in more ways than adversely modifying spawning and rearing habitat. One commenter also requested that NMFS note that water withdrawals can adversely affect groundwater by capturing flow that might otherwise discharge to surface waters.

Response: NMFS considers ''spawning, rearing, and migrating'' to be ''essential behavioral patterns.'' The word ''migrating'' will be added to the take guidance regarding water withdrawals. Regarding the second comment about the potential impact of water withdrawals on groundwater and surface water, NMFS cannot provide

further detail in this take guidance because the actual impacts of a given act depend on situation-specific conditions.

Comment 27: Several commenters asked NMFS to expand the discussion of impacts arising from water diversion and flow discharges to include impacts other than changes in stream temperature.

Response: NMFS agrees that water diversions and discharge may have other deleterious effects on salmonid habitat. These may include impacts on sediment transport, turbidity, and stream flow alterations. The actual likelihood that these actions would result in take depends on situation-specific conditions. Based on public comments, the take guidance in the final rule has been revised to clarify NMFS' intent regarding which activities are very likely to injure or kill salmonids and to identify priorities for NMFS enforcement action.

Comment 28: Several commenters recommended moving the topics ''water withdrawals'' and ''violation of federal or state CWA discharge permits'' from the section where actions may injure or kill listed fish to the section where actions are ''very likely to injure or kill salmonids.''

Response: NMFS has revised the take guidance. One change is that water withdrawals have been added to the list of activities that are very likely to injure or kill salmonids. However, the likelihood that take will actually occur depends on the individual action. The issue of actions that violate Federal and state CWA discharge permits is not specifically addressed in the new take guidance language.

Comment 29: One commenter urged NMFS to consider land use activities that affect more than just salmonid habitat. They highlighted the fact that adverse effects include impacts on floodplain function, natural hydrologic patterns, riparian function, and water quality. They also recommended expanding the list of land use activities identified in the proposed rule.

Response: In a section of the preamble of the proposed rule entitled Aids for Understanding the Limits on the Take Prohibition, under Issue 2: Population and Habitat Concepts, NMFS describes properly functioning habitat conditions that create and sustain the physical and biological features essential to conserving the species. These habitat conditions recognize the importance of floodplain function and channel migration and emphasize the dynamic nature of natural systems. NMFS intends the term ''salmonid habitat'' to be consistent with the habitat functions and processes described in the Habitat Concepts preamble language. NMFS recognizes that different types of land use activities can impact salmonid habitat to such an extent that take may occur. Language has been added to the revised take guidance to address floodplain gravel mining and floodplain development.

Comment 30: Several commenters argued that the take guidance needs to be clarified so that the public can understand what NMFS means in its different categories of take.

Response: NMFS agrees that the take guidance language in the proposed rule caused confusion about which activities can result in take and what actions will be priorities for enforcement. NMFS has revised the take guidance section to focus on those activities that are very likely to injure or kill salmonids.

Comment 31: One commenter suggested amending the proposed language concerning take due to water withdrawals by using Oregon Department of Fish and Wildlife (ODFW) minimum flows to regulate water withdrawals.

Response: NMFS does not reference specific state, local, or private regulations or programs that might prevent take because there is such a large number of programs (and partial programs) in the different states that could be cited. Absent a program approved under section 7 or 10 of the ESA or under this rule, individual jurisdictions and private entities will need to develop, adopt, and implement programs that prevent take.

Comment 32: One commenter suggested that NMFS clarify its intent by using the language ''actually impact water quality'' in the context of take occurring due to violations of Federal or state CWA discharge permits.

Response: NMFS notes the comment. However, due to changes in the final rule's take guidance language, this specific category of activity has been eliminated.

Comment 33: Some commenters asserted that rural areas were unfairly singled out for engaging in activities that take listed species while urban areas were given ESA 4(d) limits.

Response: NMFS applies the prohibition against take uniformly across the landscape encompassed by the threatened species' ESUs. This take prohibition applies equally to rural areas and urban areas and the take guidance identifies activities that can occur in urban and rural areas. Limits on the take prohibitions were given to complete programs that were shown to conserve salmon and steelhead.

Comment 34: One commenter asked that NMFS clarify the relationship between take avoidance and the designation of critical habitat.

Response: Critical habitat is a geographic description of the areas essential for a species' conservation. These designations highlight important habitat features as well as management actions that may require special management considerations. Take avoidance relates to critical habitat in that special management actions taken (or authorized) by Federal agencies must avoid adversely modifying critical habitat.

Viable Salmonid Populations (VSP)

Comment 35: Several commenters said that NMFS should not base policy on a document that is not complete and has not been reviewed in its final form.

Response: Comments on the December 13, 1999, VSP draft were solicited from over 50 peer reviewers plus tribal and state co-managers. In addition, the document has been available for public comment since the draft ESA 4(d) rules were released. We have received approximately 20 peer and co-manager reviews, plus numerous public comments. These reviews, particularly those from peer-reviewers, have generally been very positive, and the document will require little substantive revision before publication as a NOAA Technical Memorandum in June of 2000.

Comment 36: Several commenters stated that populations are generally smaller than a ''distinct population segment'' as defined in the ESA and NMFS has ''gone too far'' in proposing protection of individual populations.

Response: In applying the VSP principles, NMFS does not mean to require equal protection of every single population. The unit requiring protection under the ESA is a ''distinct population segment'' (i.e., ESU). Therefore, it is the ESU that NMFS must ensure has a minimal risk of extinction. A population is the appropriate biological unit for scientifically evaluating salmonid extinction risk. The status of an ESU can be determined in large part by analyzing the individual populations that constitute the ESU, and determining how their individual statuses combine to affect ESU viability.

Comment 37: Many commenters said that VSP is too vague to be implemented.

Response: Where possible, NMFS has endeavored to provide numerical guidelines for viability thresholds. However, VSP generally does not provide generic quantitative criteria that can be applied to all salmonid populations because the thresholds vary by species and location. This means that

applying the VSP principles will require population- and ESU-specific evaluations. This will not be very satisfying to managers looking to VSP for ''the answer,'' but is the only scientifically sound course at this time. NMFS will continue to explore whether generic guidelines (or modeling approaches) may be appropriate for some criteria (e.g., minimum population size), but this requires further analysis and will not be a part of the VSP paper finalized in June. As geographically-specific VSP applications are completed, more general numerical guidelines may be possible.

Comment 38: Several commenters noted that NMFS does not define the relationship of the VSP terms ''viable'' and ''critical'' to the ESA terms ''threatened'' and ''endangered.''

Response: The VSP paper does not attempt to define ''threatened'' and ''endangered'' under the ESA. Defining ''threatened'' and ''endangered'' requires policy decisions about the acceptable levels of risk to an ESU that the VSP concept does not address. It is also important to note that the terms viable and critical in VSP are often applied to populations, whereas the unit of interest with regard to the ESA is the ESU.

Comment 39: Several commenters wanted the effects of potential actions to be evaluated on scales other than the population (some desired smaller, some larger).

Response: Although a population is the appropriate unit for studying many biological processes, it may also be appropriate to evaluate management actions that affect units at smaller or larger spatial and temporal scales. For example, ocean harvest plans may affect multiple populations, while a habitat restoration plan only affects a small portion of a single population's habitat. The VSP concept does not preclude establishing goals at these different scales. However, management actions ultimately need to be related to population and ESU viability.

Comment 40: Several commenters said that VSP does not adequately consider the importance of freshwater habitat.

Response: VSP does not attempt to establish the habitat requirements for recovering populations. Habitat criteria are captured, generally, in the concept of Properly Functioning Conditions (PFC) discussed within this rule.

Comment 41: A few commenters said that VSP does not consider important components of recovery planning, such as ecological interactions.

Response: The VSP concept attempts to describe the population level attributes of viable salmonid populations; it does not prescribe how to recover populations. Recovery will require the entire suite of factors that impact salmon throughout their life cycle to be considered and evaluated—including ecological interactions and habitat needs. These are important issues that will need to be dealt with during recovery planning.

Comment 42: Several commenters said that data needed to evaluate VSP parameters will not be available and, therefore, VSP concepts cannot be applied.

Response: Data will generally not be available to thoroughly evaluate every VSP parameter. In developing the VSP guidelines, NMFS tried to consider all the processes that need to be evaluated in order to determine a population's status. If all of these processes cannot be evaluated, the VSP guidelines suggest the type of data that need to be collected. If a VSP guideline cannot be evaluated, managers must explicitly recognize the uncertainty associated with current management decisions because of a data-poor environment. The fact that VSP facilitates this recognition is, in itself, a valuable contribution.

Comment 43: A few commenters said that VSP makes several references to ''historic conditions'' for evaluating population status, but does not define the time frame for ''historic.''

Response: Historic conditions are used as a reference point in evaluating population status because under historic conditions populations were assumed to have been viable. The time frame, then, refers to a period in time where the population or ESU was considered self-sustaining and may represent different eras for different groups of fish. However, it should be noted that while historical data can be a valuable tool in evaluating population status, it should not suggest that NMFS will require all populations to be at historic levels in order to be viable. The value placed on historic data and the relationship between recovery goals and historic levels will be ESU- and population-specific.

Comment 44: One commenter argued that given the high levels of uncertainty associated with the ESU viability guidelines, the default assumption should be that all populations need to be viable in order to produce a viable ESU.

Response: This seems to be an appropriately precautionary approach, but responses to uncertainty entail policy decisions that can only be made after carefully analyzing a specific situation.

Comment 45: One commenter said that by defining populations, VSP claims that straying always has negative effects on viability.

Response: In the process of identifying populations, there is no blanket assumption that straying has a negative effect on viability. Straying is a natural process, and appropriate levels of straying within and among viable populations will depend on a balance between the risks and benefits of straying. Indeed, the VSP document acknowledges the potentially critical role that straying plays in extinction and recolonization dynamics among salmonid subpopulations and populations. It should also be noted that human factors (such as stock transfers, blockage of migratory routes, and other habitat alterations) have the potential to increase rates of genetic exchange by one to two orders of magnitude over historic levels. These changes are unlikely to be beneficial.

Comment 46: Several commenters stated that VSP does not consider certain factors to be important when evaluating population status. These factors included (1) marine-derived nutrients, (2) diversity, (3) temporal and spatial structure, and (4) genetic drift.

Response: These topics are covered in the current draft of the VSP document, and some topics may be clarified or expanded during the revision process.

Comment 47: A few commenters said that in evaluating VSP parameters, juvenile fish counts should be considered as well as (or instead of) adult spawner counts.

Response: Although the VSP paper discusses using juvenile fish counts, the guidelines generally focus on adult spawners counts—and not other life stages—because spawner count data sets are prevalent throughout the region and they can be related to the extensive body of conservation biology principles with relative ease. However, NMFS does not go into great detail on monitoring and evaluation programs and should consider any scientifically defensible strategy that allows population status to be evaluated. In some cases, it may be more feasible to collect data on juveniles than adults and it may be possible to assess population viability based primarily on juvenile counts. However, the population evaluation would still need to address the principles outlined in VSP regarding all four parameters (i.e., abundance, productivity, spatial structure, and diversity).

Comment 48: One commenter said NMFS does not take an ''ecosystem approach.''

Response: It is true that VSP focuses only on Pacific salmonid populations and the ecological processes that directly or indirectly affect them. The paper does not deal explicitly with other species or ecosystem processes that do not affect salmonids. However, given the large geographic scale and the presumed keystone role of salmonids in many ecosystems, an ''ecosystem approach'' is likely to emerge. Defining the management processes that may support an ''ecosystem approach'' is outside VSP's scope and intent.

Comment 49: One commenter said that VSP is a framework, not a benchmark, and asserted that the states should have the latitude to develop some of their own benchmarks within this framework.

Response: As noted in a previous response, VSP generally does not provide generic quantitative criteria. Quantitative criteria will be required in setting recovery goals for specific ESUs. In some contexts (often in reference to broad landscapes), the standard is expressed as ''seeking to attain or maintain PFC.'' ''Contribute to PFC'' is a phrase often used in reference to near-term actions that put habitat on a course to attain PFC over time and is consistent with the standard. Finally, in some circumstances (often in referring to more site-scale decisions), the standard may be expressed as ''not precluding PFC.'' There is no distinction in practice between these expressions of the standard.

Evaluating Habitat Conditions–Properly Functioning Conditions (PFC)

Comment 50: Several commenters opined that PFC should be more clearly defined. Others suggested that specific numeric criteria be included.

Response: Both the preamble and rule texts have been modified to more clearly define PFC and its central role in habitat evaluations. Proper functioning conditions create and sustain over time the physical and biological characteristics that are essential to conservation of the species, whether important for spawning, breeding, rearing, feeding, migration, sheltering, or other functions. Habitat-affecting processes include, but are not limited to vegetation growth, bedload transport through rivers and streams, rainfall runoff patterns, and river channel migration. The concept of proper function recognizes that natural patterns of habitat disturbance, such as through floods, landslides and wildfires, will continue.

NMFS measures conditions on the landscape to evaluate whether and how PFC is likely to be affected, attained or maintained by an activity. The indicators vary between different landscapes based on unique physiographic, geologic or other features. Although the indicators used to assess functioning condition may entail instantaneous measurements, they are chosen, using the best available science, to detect the health of underlying processes, not static characteristics.

The scope of any given activity is important to NMFS' analysis. The scope of the activity may be such that only a portion of the habitat forming processes in a watershed are affected by it. For NMFS to find that an activity is consistent with the conservation of the listed salmonids, only the effects on habitat functions that are within the scope of that activity will be evaluated. For example, an integrated pest management program may affect habitat forming processes related to clean water, but have no effect on physical barriers preventing access by fish to a stream.

NMFS' evaluation of an activity includes an analysis of both direct and indirect effects of the action. ''Indirect effects'' are those that are caused by the action and are later in time but are still reasonably certain to occur. They include the effects on species or critical habitat of future activities that are induced by the original action and that occur after the action is completed. The analysis also takes into account direct and indirect effects of activities that are interrelated or interdependent with the proposed action. ''Interrelated actions'' are those that are part of a larger action and depend on the larger action for their justification. ''Interdependent actions'' are those that have no independent utility apart from the action under consideration. NMFS has published an extensive discussion of the effects of activities in its Consultation Handbook—Procedures for Conducting Consultation and Conference Activities Under section 7 of the Endangered Species Act (March, 1998).

Though there is more than one valid analytical framework for determining effects of an activity, NMFS has developed an analytic methodology it has documented in a Matrix of Pathways and Indicators (MPI; often called ''The Matrix''). The MPI can help NMFS and others identify any risks to PFC. The pathways for determining the effects of an action are represented as six conceptual groupings (e.g., water quality, channel condition, and dynamics) of 18 habitat condition indicators (e.g., temperature, width/depth ratio). Default indicator criteria (mostly numeric, though some are narrative) are laid out for three levels of environmental baseline condition: properly functioning, at risk, and not properly functioning. The effect of the action upon each indicator is classified by whether it will restore, maintain, or degrade the indicator.

The MPI provides a consistent, but geographically adaptable, framework for effects determinations. The pathways and indicators, as well as the ranges of their associated criteria, are amenable to alteration through the process of watershed analysis. The MPI, and variations on it, are widely used in consultations under Section 7 of the ESA on the effects of federal actions and will be similarly used to evaluate activities pursuant to this rule. The MPI is also used in other venues to determine baseline conditions, identify properly functioning condition, and estimate the effects of individual management prescriptions. While this assessment tool originally was developed to address forestry activities, NMFS intends to work with state, tribal, and other experts to facilitate its use in other ecological settings such as lakes, estuaries and urban settings.

Comment 51: One commenter objected that the conservation standard for PFC was ''jeopardy'' or survival, which is inadequate for ESA 4(d) rules and for recovery.

Response: PFC is not calibrated to provide for population persistence at some level less than full recovery, nor does NMFS believe that the best available science holds out the possibility of such an incremental approach to habitat conservation. Land and resource managers are required to demonstrate that their proposed activities will allow for the recovery of all essential functions of salmon habitat.

Comment 52: Several letters addressed the applicability of the ''properly functioning conditions'' concept to urban settings and questioned whether PFC could ever be attained in urban environments.

Response: It is widely recognized that urbanization alters the hydrologic behavior of once unpaved, undeveloped lands. Within this context, common goals for the management of urban landscapes include controlling stormwater runoff and protecting water quality. An urban watershed can become properly functioning if the ecological functions essential for listed salmonids within the watershed–such as storage, attenuation of peak flows, and water quality mitigation—can be restored by increasing watershed storage and providing buffers to attenuate water quality problems emanating from urban landscapes. In this context, the PFC goal

is to restore the hydrologic function in the urban watershed by modifying peak flow events, providing storage, protecting water quality and habitat, and allowing passage.

Comment 53: One commenter stated that the draft VSP concept and NMFS' established PFC approach were inconsistent.

Response: The VSP concept is being developed to serve as a population management analog to PFC's role in evaluating habitat-affecting actions. The intent of VSP is to serve as a consistent conservation standard, equivalent to PFC, that can be applied in diverse analyses. The VSP emphasizes measurable fish population parameters because that is how fish harvest and culture activities' environmental effects are most immediately and evidently expressed. Conversely, PFC indicators are typically physical habitat characteristics because they most readily and measurably show the effects of land and water management regimes. In essence, PFC is a description of conditions that support salmonid productivity at a viable level. However, because the standards are applied at widely different geographic scales, NMFS cannot currently describe the quantitative relationships between fine-scale habitat characteristics and salmon population levels. Though the two approaches measure effects on different salmonid biological requirements, they consistently strive toward the same end: determining the effects of various activities, placing them in the context of the species' life histories, and using that data to ascertain the best means of recovering the salmon.

Legal/National Environmental Policy Act (NEPA)/Reg Flex/Direct Take

Comment 54: Commenters asserted that the proposed rule exceeds NMFS' authority, either by reaching too far in protections or failing to meet ESA mandates by not being protective enough. Many commenters raised questions about the legal standards underlying limits and about the relationship between section 4(d) and section 7 consultations or section 10 habitat conservation plans. Several asserted that the standards for all three functions should be the same; others emphasized that the standard for 4(d) is more protective, stating that it must conserve the listed species.

Response: Many of those comments focus more on the limits provided than on the legally enforceable outcome of the rule (the take prohibitions). This response will first set forth in a general fashion the basis for this final rule, and then respond to the remainder of legal issues that are not included in the overall description.

First, section 4(d) regulations are those ''necessary and advisable to provide for conservation'' of the threatened salmonids. This final rule imposes one major regulatory prohibition (in addition to the less significant prohibitions of section 9(a)(1) or interstate commerce and import/export): that is, that actors are to avoid taking threatened salmonids of the 14 listed ESUs. The take prohibitions are what the ESA imposes by statute to protect endangered species and, if perfectly implemented, would provide the most protection possible. There is no question but that take prohibitions ''provide for the conservation'' of the species.

Nor can there be any real question about the advisability of imposing take prohibitions at all. NMFS' listings were based on findings that the ESUs are at risk and specifically that there are factors (set forth in ESA section (4(a)(1)) that have caused and are continuing to cause the listed ESUs' populations to decline. See ''Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead'' (NMFS, 1996); Coastal Coho Habitat Factors for Decline and Protective Efforts in Oregon'' (NMFS, 1997), and ''Factors Contributing to the Decline of Chinook Salmon: An Addendum to the 1996 West Coast Steelhead Factors for Decline Report'' (NMFS, 1998). Many of these factors (habitat destruction, overutilization, inadequate regulatory systems) are state, local, or private, and have no link to Federal actions. Prohibiting take for these ESUs is, therefore, the most direct way of protecting the listed species. NMFS listed two additional chinook ESUs as threatened in September of 1999 and will be proposing ESA 4(d) protections for them in the near future.

This final rule also establishes 13 circumstances in which NMFS does not find it necessary and advisable to apply the take prohibitions. NMFS believes that by describing (wherever possible) a program or the components of a program that will adequately protect the species, it provides valuable guidance to agencies or individuals wishing to play a part in salmonid protection and will minimize their legal risks under the ESA as well. NMFS further believes that it is appropriate to limit the take prohibitions for such programs provided that NMFS' salmonid conservation goal (and legal responsibility) is not compromised—that is, so long as the rule provides for conservation of the listed ESUs. Thus, this final rule limits the application of the take prohibitions selectively. NMFS is confident that given the stringency of the fish protections in the programs receiving limits on the take prohibitions, this final rule meets the section 4(d) conservation standard.

In determining that take prohibitions are not necessary and advisable for a particular program, NMFS has ensured that each program—including programs that NMFS will evaluate in the future to determine whether they fit within one of the 13 limits—will not jeopardize the species. That is, none will appreciably reduce the likelihood of survival and recovery of any of the ESUs in the wild.

Further, for some programs involving sectors which have had particularly destructive impacts on habitat or bear other significant responsibility for decline of the species, there must be a demonstration above and beyond ''not jeopardizing.'' Just as a Federal agency has a responsibility not only to conduct its affairs in a way that does not jeopardize but also to use its authorities in furtherance of the conservation of the species, ESA 4(d) regulations as a whole must provide measures necessary and appropriate to conserve the species. Hence, while for many actions or programs ''not jeopardizing'' may be equivalent to not precluding or impairing recovery, for others it may be necessary to include commitments for specific positive contributions that are vital to recovery because of past impacts from those sectors. NMFS has taken those considerations into account when evaluating potential programs (or establishing approval criteria) to determine if they qualify for inclusion in one of the limits.

By statutory definition, species conservation equates to those methods and procedures that will bring a species to the point at which it no longer needs the protections of the ESA and may be delisted. Those methods and procedures encompass the full array of actions that will contribute to recovery: Federal efforts to avoid jeopardy and conserve the species under section 7; efforts taken in accord with section 10 conservation plans; state, tribal, local, or private initiatives undertaken to improve the prospects of listed fish quite independent of any ESA requirement; efforts to avoid taking listed species; and habitat improvements accomplished under numerous regulatory programs for protecting other resources, such as the CWA, state and Federal regulations governing fill and removal in waterways, and the like.

NMFS believes this final rule reflects the necessary and appropriate level of protections for conserving these threatened ESUs given our current

knowledge. As the preamble to the proposed rule noted, NMFS recognizes that new information may lead to changes in the final rule. NMFS has not yet completed recovery planning for the species subject to this final rule, nor does the ESA command that recovery planning precede enactment of 4(d) regulations. Once recovery planning is complete, NMFS may amend the 4(d) protections with any combination of new or amended limits, impose the take prohibitions if a limit were found not to be consistent with a necessary and appropriate recovery measure, or require enhancements or prescriptions.

Comment 55: A few commenters asserted that NMFS gives no indication that it intends to comply with ESA sections 7 or 10 in promulgating or implementing these rules.

Response: Promulgation of a section 4(d) rule is a Federal action requiring consultation under section 7 of the ESA. NMFS must ensure through its internal consultation process that the 4(d) rule being promulgated is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitat. NMFS completed the required consultation and concluded that promulgation of this rule greatly improves protections for threatened salmonids and their habitat, and is not likely to adversely affect either those ESUs or other listed species. NMFS has complied with its section 7 consultation requirements.

Where take prohibitions are imposed, those pursuing actions that may take listed salmonids may choose to apply for a section 10 permit at any time. Section 10 permits are issued on a case-by-case basis supported by individual analysis and section 7 consultation. Where NMFS has found it not necessary to impose take prohibitions, there would be no basis for issuing research or enhancement or incidental take permits through section 10, provided the action is carried out in accordance with the requirements of the applicable limit.

Comment 56: One commenter urged that NMFS make clear that no state or local rule shall hinder NMFS or citizens from taking legal actions to ensure salmon recovery. Another asked that NMFS provide for citizen enforcement and appeal of local government permits re ESA issues. A third commenter suggested that the limits be revised to reflect the idea that they extend only so far as local governments' reasonable interpretation and application of its own rules.

Response: This final rule does not in any way alter the ESA's enforcement provisions, including the rights of third parties to enforce under appropriate circumstances. Second, NMFS believes the proposed rules clearly established that in any enforcement proceeding where there is a question whether an action is ''in compliance with'' one of the described limits, it is ultimately the defendant's (or respondent's) responsibility to assert that issue as an affirmative defense and establish facts that show compliance. In order to dispel any confusion by the public on this point, NMFS has added a subsection, ''Affirmative defense,'' to spell out that it will be the defendant's or respondent's obligation to plead application of and compliance with a limit as an affirmative defense. This approach is consistent with the structure of the proposed rule and with ESA section 1539(g) which states ''In connection with any action alleging a violation of section 1538 [the section 9 prohibitions] of this title, any person claiming the benefit of any exemption or permit under this chapter shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.'' NMFS anticipates that in most cases, the applicability of individual limits will be resolved early in an enforcement investigation. Enforcement personnel will make reasonable efforts to attempt to rule out the applicability of 4(d) limits by, for example, evaluating circumstantial evidence, or through direct contact with the potential violator and subsequent confirmation through reliable third party sources. However, ultimately it is not the agency's responsibility to determine the existence or nonexistence of every exculpatory fact relating to an alleged ESA violation. This clarification is also consistent with existing case law, which generally holds that the burden of raising and proving affirmative defenses rests with the defendant, not with the government (see, e.g., *Patterson* v. *New York*, 97 S.Ct. 2319 (1977)).

As to the third comment, once a state or local government program comes within a limit (for instance, local development ordinances found by NMFS to meet the standards of the rule), it will be up to the local government to implement that ordinance, including any necessary exercise of reasonable judgement. If monitoring or other information indicates that the ordinance, as implemented, is not providing adequate protections, then the adaptive mechanisms in the 4(d) rule will trigger changes in the ordinance, imposition of the take prohibitions, or imposition under the ESA of affirmative requirements.

Comment 57: One commenter suggested that the standards set in the 4(d) rule to qualify for a limit are higher than landowners would otherwise be required to meet to avoid take. Another stated that there was no consistent conservation standard applied in evaluating potential limits.

Response: NMFS must respectfully disagree. The limits described in this final rule do not in every circumstance avoid all take. To do so would require much more stringent steps in some cases. Rather, the limits reflect NMFS' judgement that activities in compliance with such a program or approach are what current information indicates will be necessary and advisable for that activity sector to conserve the ESUs. Activities in compliance with such a program or approach will not appreciably reduce the likelihood of survival and recovery of the species in the wild and, where necessary, will include other conservation measures to repair or improve conditions. Nonetheless, it is expected—and in some cases demonstrable—that activities satisfying the conditions for inclusion within one of the limits will still take listed salmonids.

In evaluating fishery management programs to determine if they qualify for a limit, NMFS relies on the concept of viable salmonid populations and its associated use of viable and critical thresholds for management decisions. The limits require that relevant biological parameters be identified so individual population status can be evaluated and the program may be placed in an appropriate context for determining whether it will support population viability. Land management related programs being considered for limits are assessed according to their ability to help attain or maintain properly functioning conditions (i.e., those conditions NMFS considers necessary for supporting viable salmonid populations).

Comment 58: Several commenters noted that NMFS had not made the case that take prohibitions (or any ESA 4(d) rules) are needed for these ESUs, or for specific sectors of activity. Some assert that NMFS should first demonstrate that conservation activities applicable to Federal activities have been fully tapped before applying 4(d) rules to private lands.

Response: NMFS must respectfully disagree. While the contribution of non-Federal actions to the overall decline of the ESUs affected by this final rule varies, depending in part on the ratio of Federal to non-Federal lands and in part

on the concentration of habitat modifications and non-Federal hatchery or harvest impacts, NMFS could not justify placing all hope of sustaining and recovering these ESUs on Federal agency actions alone. The record upon which NMFS listed these ESUs is abundantly clear that the decline of the ESUs is substantially influenced by actions other than those with some Federal nexus. While section 4(d) provides the Secretary some discretion in determining what protective regulations are necessary and advisable in a given circumstance, the structure of the section strongly supports the appropriateness of a determination to impose take prohibitions.

Comment 59: At least one commenter, while agreeing that the limits are not prescriptive rules, states that the rule making record does not support ''this wide-ranging prescriptive rule'' which the commenter believes prohibits ''a very wide variety of activities that might occasionally ''take'' listed species'' without NMFS' permission.

Response: To repeat the preamble text from the proposed rules, ''[t]he fact of not being within a limit would not mean that a particular action necessarily violates the ESA or this regulation.'' NMFS has attempted to make even clearer in this final rule that activities that are not within a limit are not prohibited. What is prohibited is taking a threatened salmonid through any activities not within a limit. Those conducting activities that are not within a limit are subject to liability only if it can be demonstrated that their activities in fact have taken a threatened salmonid. An actor believing that its actions result in incidental take may apply for an incidental take permit under ESA section 10 to ensure that no enforcement liability accrues.

Comment 60: Two commenters noted that they had requested the decision-making record (for the proposed rule) and were told that it was ''unavailable for public review.''

Response: Both proposed 4(d) rules included a ''References'' section that offered a list of the references relied on. These documents were available to the public. That is all that informal rulemaking requires.

Comment 61: A few commenters noted that it is inconsistent with the ESA to apply the ''jeopardy'' standard (to not appreciably reduce the likelihood of survival and recovery in the wild) in a 4(d) rule; also, doing so for tribal plans is inconsistent with the standard applied for other ''exemptions.'' One commenter urged that NMFS model all of the limits after the limit for tribal plans, which provides a process for NMFS to determine a plan's consistency with ESA standards, but does not set out specific requirements or standards.

Response: NMFS believes that none of the limits will jeopardize the listed species' survival or recovery and that each habitat-related limit will contribute to placing habitat on a trajectory toward proper function and populations on a trajectory toward viability. It is worth noting that in practical application, distinctions between what is needed for survival and recovery and between providing for recovery and not jeopardizing the likelihood of survival and recovery are speculative at best and perhaps specious. The limit for tribal plans applies that same standard but without specific requirements or standards, in deference to tribal sovereignty and the government-to-government basis on which NMFS interacts with tribes. It is important to note that while there is less specific guidance with respect to tribal resource management plans, they will be assessed against the fundamental ESA standard (whether they will appreciably reduce the likelihood of survival and recovery in the wild), as have the other limits, and that any determination regarding tribal resource management plans will be accompanied by a description of the biological rationale for its outcome.

Comment 62: One commenter believed that the ESA 4(d) limits are ''negotiated,'' ''second class'' HCPs appropriate only to larger governmental entities and that they consign jurisdictions with smaller population bases to the fringes of the process. Another urged that all limits should be drafted so that they are made available to any government wanting to participate and get coverage under the limit.

Response: While NMFS does not agree with the commenter's characterization of the limits, we have broadened some of the limits' availability and modified others in such a way that they are more adaptable for smaller or more rural jurisdictions. For instance, the development limit no longer targets only to ''urban density'' development, and the road maintenance limit is available to any jurisdiction. These sorts of adjustments are the very heart of the 4(d) limit process—they illustrate NMFS' intention to create an open process of public review and adapt our proposals (when we may) in accordance with the feedback we receive.

Comment 63: One commenter suggested that NMFS should create ''categorical exclusions'' for activities not requiring the ongoing review and monitoring required in the proposed rules. The commenter points to FWS regulations that permit the Utah prairie dog to be taken under Utah state permits.

Response: In this final rule NMFS has made a number of adjustments to make limits more broadly available and to minimize requirements for oversight. However, the prairie dog provision the commenter cites makes very clear that if those takings interfere with conserving the species, FWS may immediately prohibit further such takings. Similarly, NMFS believes that the level of ''tracking'' required in this final rule will ensure that impacts from non-prohibited activities are consistent with conserving the threatened salmonids.

Comment 64: Some commenters asserted that the ''proposed requirement'' for protecting flows for listed species should be addressed in a local government's ordinance is beyond the scope and authority of a local government.

Response: Evaluation consideration ''J'' for the MRCI limit asks that the local government ordinances ensure that [new] development-related water supply demands can be met without impacting flows needed for threatened salmonids. This request does not require local government to regulate water rights or otherwise control flows; it asks only that new development demonstrate that its new water demands can be satisfied without undercutting flows required by threatened salmonids.

Comment 65: One commenter suggested NMFS should delegate to state and local officials authority to limit the take prohibition or provide a ''certificate of safe harbor.'' Another commenter suggested that ESA section 9 take prohibitions cannot apply within a state unless the state has also adopted those regulations. This comment relies on the reference within 4(d) to section 6(c)(" ...such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that such regulations have also been adopted by such State'').

Response: The approach NMFS takes in this final rule aims to recognize and encourage state and local programs wherever NMFS finds them adequate. Nothing within the ESA would give NMFS the authority to delegate the functions suggested, unless a state had the full set of authorities required under section 6 of the ESA for state ''assumption'' of a program. No state has as yet met those qualifications, which would include having all authorities necessary to conserve the listed species

(such as the ESA provides through section 9, etc.). Therefore, the cited text of section 4(d) does not apply.

Comment 66: Another commenter suggested NMFS lacked authority to ''delegate'' scientific research permit authority to the states.

Response: As discussed in response to an earlier comment, this final rule does not delegate permit authority to states. For a subset of all research activities, this final rule does not apply take prohibitions, leaving those research activities subject only to state permitting. For other research, ESA constraints are still in place and researchers should seek ESA section 10 permits (for instance, for research in which private parties intentionally take listed fish.)

Comment 67: Several comments assert that the ESA 4(d) rules will result in takings of private property. One asked that the rule provide greater flexibility for redevelopment to prevent takings of private property.

Response: The legal effect of this final rule is to prohibit take of threatened salmonids. Complying with that mandate will certainly cause some changes in land management and use and that may affect the economic value of certain activities on the land to a greater or lesser extent—depending on the circumstance. This final rule does not, on its face, prohibit property use in any way that would rise to the level of a constitutional taking, nor does NMFS believe that the adjustments necessary to avoid taking threatened salmonids will be so draconian as to amount to a constitutional taking in any case.

Although NMFS does not agree that this final rule would likely cause a constitutional taking of property, NMFS did intend that the development limit should be broadly available and has amended and clarified the regulation to accomplish that purpose, including specifically naming redevelopment as one of the activities that individual ordinances could cover within the limit.

Comment 68: Many commenters desired that NMFS clarify the status of the limits: either wanting to be sure they are not prescriptive, or believing they should be hard requirements. Commenters also wanted to know if activities outside a limit constituted a violation of the rule.

Response: The limits are not prescriptive. They are not even enforceable requirements; rather, an entity wishing assurance that its actions are consistent with the ESA may take the necessary steps—as outlined in the regulations—to come within a limit on the take prohibitions. No enforcement action can be taken based on a charge that someone has failed to follow a limit. Enforcement actions must allege (and ultimately prove) that a listed fish has been taken.

NMFS understands that some commenters would prefer the agency to promulgate specific, detailed regulations to govern particular sectors of activity. For a variety of reasons, NMFS has not chosen that course at this time. Specific proscriptions are an effective protective mechanism where, as with threatened sea turtles, a very specific cause of mortality can be addressed with precision. In the case of Pacific salmonids, where impacts are caused by a large array of activities and where the circumstances leading those impacts to constitute a take are extremely site- or circumstance-specific, NMFS believes it extremely difficult to design a single set of prescriptive rules to cover all of those situations. In addition, prescriptive regulations would likely impose unnecessary costs on some individuals. This is because state, local and individual strategies for avoiding take can be more closely adapted to the local geography or fishery opportunities than can rules that cover an entire landscape. Thus they are equally as effective (or more so) at avoiding take of listed species and less costly than regionwide, blanket prescriptions. The approach taken in this final rule, recognizing limits but not requiring all entities or actors to be within a limit, offers an opportunity to test particular combinations of approaches without requiring everyone to invest in them immediately. Finally, as noted elsewhere in these responses, once recovery planning is complete it may identify specific areas needing more prescriptive attention.

Comment 69: Numerous comments suggested that the rule intrudes impermissibly on state water law. Commenters questioned NMFS' understanding of western water law and authority to regulate water.

Response: First, as discussed elsewhere, this rule does not directly regulate water use or water rights in any way. Rather, water diversion was identified as an activity likely to result in take under particular circumstances. There is nothing in the ESA that would carve water use out of the bundle of activities that might lead to an enforceable take of salmonids, nor that would excuse senior water users from responsibility for any take that occurs as a result of their actions. NMFS does not disagree that on a case-by-case basis, questions or priority may be germane to determining causal responsibility for particular impacts. In ''A Citizen's Guide to the 4(d) Rule'' (NMFS, 2000), NMFS provides more information on how water users may evaluate the level of risk of take associated with their diversions and explores options for reducing that risk.

Comment 70: One commenter asked NMFS to clarify whether ESA section 7 compliance ''is a substitute for'' compliance under the rule. Another requested that NMFS include an explicit limit for any entity whose actions have been the subject of an informal consultation in which NMFS has concurred that the action is not likely to adversely affect the threatened species.

Response: Section 7 compliance is an adequate substitute for compliance under this rule. So long as an entity is acting within a completed formal ESA section 7 consultation and compliant with terms and conditions imposed, if any, then section 7(o)(2) provides an exception to the prohibitions on taking. Actions subject to informal consultation have a very low probability of take and are thus in the category of activities that do not need to pursue a limit.

Comment 71: Take prohibitions should be applied to California's Central Valley, especially the Yuba River area.

Response: The Central Valley steelhead ESU is subject to this final rule. NMFS expects to propose ESA 4(d) protections for the Central Valley spring chinook ESU (listed in September of 1999) within the coming months. Meanwhile, that ESU will benefit from habitat protection afforded by steps taken to avoid taking Central Valley steelhead.

Comment 72: One commenter stated that contrary to the Executive Order on Federalism (E.O. 13132), this final rule's intervention (monitoring and reporting/adjustment of limitations) in state and local land use governance exceeds NMFS' authority by unnecessarily infringing on state sovereignty. Another suggested that the final rule should state that NMFS is not requiring consistency between state and local regulatory programs and objectives of the ESA.

Response: NMFS does not agree that this rule intrudes upon state or local authorities or sovereignty. This rule does not require states to undertake any particular set of actions. It requires that states (like all other actors) refrain from taking threatened salmonids. It provides one mechanism that actors (including states for some of the limits) may pursue to ensure that they do not violate take prohibitions. A state could instead choose to pursue ESA section 10 permits. Where there is a Federal nexus, state actions may receive ESA scrutiny and legal assurance through an ESA section 7 consultation initiated by the action agency. Or, in appropriate cases,

a state may determine in its own judgement that particular activities do not carry a risk of taking listed fish, or it may modify its activities in such a way as to reduce any risk of take to an acceptable level.

Comment 73: One commenter argues that the VSP paper is inconsistent with the statutory requirements of the ESA, because of the statement in the preamble to the proposed rules that a ''viable population threshold refers to a condition where the population is self sustaining, and not at risk of becoming endangered in the foreseeable future.'' The commenter suggests this implies a threatened species can be allowed to remain in threatened condition perpetually, and still be considered viable.

Response: The commenter has identified an imprecise characterization that was included in the preamble to the proposed rules. This statement has been removed. As explained in response to other comments on VSP, the VSP paper does not attempt to define ''threatened'' or ''endangered'' under the ESA.

Comment 74: Some commenters stated that NMFS is abusing its discretion by not invoking section 9 prohibitions, and instead relying upon promised conservation efforts and future actions that are not currently operational.

Response: This final rule relies upon a determination that a conservation program approved for a limit of the take prohibition has a high degree of certainty that it will be implemented. NMFS may require a commitment to mitigate if implementation of a program is terminated prior to completion.

Comment 75: One commenter asserted that NMFS should not or cannot incorporate guidance by reference unless it has undergone ESA section 7 analysis.

Response: First, because of modifications made in response to comments, this final rule incorporates far fewer documents by reference. Second, while there is no requirement for a section 7 consultation on such documents, those referenced in the final rule have been analyzed to ensure that actions under them will not appreciably reduce the likelihood of survival and recovery of the listed ESUs in the wild.

Comment 76: One commenter wanted the rules modified to prohibit Federal agencies from activities that ''take'' threatened salmonids.

Response: In most cases this final rule does not specifically address Federal agency actions. Once take prohibitions are in effect, they apply to all actors—Federal and non-Federal alike. Second, the ESA requires that Federal actions be assessed under section 7(a)(2), and nothing written in a 4(d) rule would excuse that obligation. Once NMFS has issued a biological opinion and incidental take statement for Federal agency actions, section 7(o) of the ESA relieves the agency of liability for take.

Comment 77: One commenter asserted that the rules could make the controllers of certain activities (such as noxious weed control) vulnerable to third-party lawsuits. Commenters expressed concern about municipal and irrigation district liability for issuing permits that result in take. One commenter stated that municipal entities cannot be held liable for take if the entity does not have discretion in issuing a permit.

Response: The first commenter is correct that under the ESA the take prohibitions are enforceable by NMFS or by third parties. This final rule does not create any enforcement routes not specified in the ESA. The take prohibitions apply to all actors, so municipalities and irrigation districts certainly face the possibility of liability; actual liability would depend on specific factual circumstances and the degree of connection between the permit and the take that actually occurs. As to the suggested legal interpretation that a municipal entity's lack of discretion in deciding to issue a permit would be an absolute defense to liability, NMFS believes that question must be addressed in the specific enforcement context in which it arises.

Comment 78: One commenter noted that in cases where documents create new legal rights or duties, they are considered ''substantive rules'' and must be either published in the **Federal Register** or be incorporated by reference through the Director of the Federal Register. Therefore, NMFS should clarify how subsequent amendments to these referenced documents will be treated.

Response: There are seven documents referred to in the regulatory text of this final rule. The purpose of making these documents available to the public is to inform governmental entities and other interested parties of the technical components NMFS expects to be addressed in programs submitted for its review. These technical documents provide guidance to entities as they consider whether to submit a program for a 4(d) limit. The documents represent several kinds of guidance, and are not binding regulations requiring particular actions by any entity or interested party. NMFS will continue to review the applicability and technical content of its own documents as they are used in the future and make revisions, corrections or additions as needed. NMFS will use the mechanisms of this final rule to take comment on revisions of any of the referenced state programs. If any of these documents is revised and NMFS relies on the revised version to provide guidance in continued implementation of the rule, NMFS will publish in the **Federal Register** a notice of its availability stating that the revised document is now the one referred to in the specified 223.203(b) subsection.

Comment 79: One commenter suggested that NMFS clarify the regulation regarding withdrawal of a take limit, believing those in the proposed rule to be unnecessarily harsh.

Response: NMFS has modified the language throughout this final rule to clarify this point.

Comment 80: One commenter stated that the final rule should be non-severable, so that if any or all limits are overturned in a legal challenge, the take prohibitions will not remain in effect. Another suggested that no take prohibition should be imposed until broad limits are available for virtually all sectors of human activity.

Response: A fundamental precept of this final rule is NMFS' determination that the subject ESUs require 4(d) protections. Given that, it would be inconsistent with NMFS' ESA responsibilities to the threatened fish to defer any protections in that manner. NMFS has clarified this point by making it explicit that the agency intends the provisions of this rule to be severable.

Comment 81: Because NMFS broadly applies PFC as standards with a regulatory effect, PFC guidance and supporting science should be subject to public notice and comment before it is formally applied to ESA 4(d) limitation approvals.

Response: PFC requires the maintenance of habitat functions essential to the survival and recovery of listed salmonids. As such, the use of the PFC approach as an analytical tool adds no standard to that already established in the ESA, but rather assists NMFS and the users in evaluating effects of activities on conservation of the species.

Comment 82: One commenter asked NMFS to clarify whether the take prohibition applies throughout the range of the ESUs or only in designated critical habitat. Another asserted that NMFS has created a de facto extension of critical habitat.

Response: The take prohibition applies throughout the range of the affected ESUs. Critical habitat designation gives guidance to Federal agencies, and is not directly linked to ESA section 4(d) in any way. As to the

assertion that the rule creates ''de facto'' critical habitat, NMFS must respectfully disagree. Contrary to the commenter's perception, this rule does not suggest that ''highly burdensome and expensive 'safe harbors' are what it takes to avoid ESA section 9 take liability.'' The rule provides one method of ensuring that no ESA section 9 take liability accrues, but there are other methods such as section 10 permits. Or, an actor may determine in its own judgement that particular activities do not carry a risk of taking listed fish, or modify its activities in such a way as to reduce any risk of take to an acceptable level.

Direct Take

Comment 83: Some commenters contended that under the ESA, and court decisions interpreting it, NMFS does not have the discretion to ''allow'' or ''authorize'' direct take of listed species through 4(d). The commenters cite cases in which the courts have determined that FWS could not authorize hunting of threatened wolves or grizzly bears unless it had first determined that ''population pressures within the animal's ecosystem cannot otherwise be relieved.''

Response: In these rules the Secretary is making an initial determination as to what protective regulations are ''necessary and advisable to provide for the conservation of'' the listed salmonids. In making that determination, the Secretary is not required to impose take prohibitions. In fact, section 4(d) goes on to state that ''[t]he Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1)...'' Thus, the Secretary has discretion to assess the status of the listed ESUs and to determine, as he has here, that blanket application of the take prohibitions is not necessary and advisable, and to describe the circumstances in which take prohibitions will not be applied. The Secretary has found that in certain circumstances, activities are sufficiently regulated by other entities or processes that Federal take prohibitions are not necessary and advisable.

In a variety of circumstances, take prohibitions might not be found necessary and advisable to provide for the conservation of a threatened species. For instance, if a threatened species is located almost exclusively on Federal lands and impacted largely by a Federal activity on those lands, the Secretary might determine that section 7 consultations will provide all the protections necessary to allow the species to recover. Or, a threatened species might be threatened because of negative impacts from a narrow class of human activity. In that circumstance, the Secretary might choose to impose prescriptive regulations tailored specifically to alter those activities in a manner that would allow the species to recover.

More importantly, the biological impact of take on the ESU is the same, whether a particular number of listed fish are lost as a result of incidental impacts or intentional (directed) impacts. Situations in which this final rule would limit the application of take prohibitions for intentional taking of threatened salmonids are extremely limited and consistent with the conservation and recovery goals of the ESA. Scientific research activities conducted by fisheries experts, in accord with specific guidance, and permitted by a state, can be within the limit. Harvest activity will have direct impacts in very few situations—generally where the status of the affected population is already considered viable, even though the status of the larger ESU is not. Taking listed broodstock for artificial propagation might occur for conservation purposes (or, only after the species' conservation needs are met, for secondary purposes such as fisheries).

Comment 84: A few commenters stated that in excusing direct take through harvest, NMFS is placing a far more demanding burden on other sectors (such as land use) in terms of minimizing and avoiding incidental take. They asserted that the demands/standards should be equivalent.

Response: This final rule is far from ''excusing direct take through harvest'' in any blanket fashion, as the comment may be read to suggest. Rather, in setting out the standards by which any fishery harvest program will be judged, NMFS has emphasized the means by which a management scheme maintains or achieves viable status for a population rather than on the specific mechanism by which that impact may be incurred. This final rule does not give a pass to any specific management plan at this time; each plan must be made available for public comment and reviewed against the standards for an Fishery Management and Evaluation Plan (FMEP). NMFS anticipates few instances, especially in the early stages of recovery, where such plans will include impacts targeted on threatened salmonids.

The standards by which NMFS will judge the suitability of any program for a limit are the same, whether the program manages fishery harvest or some type of land management activity. In both instances, such a program may have some impact on the listed ESU, but at a level that will not appreciably reduce the likelihood of its survival and recovery in the wild. Because current habitat conditions are in most cases far below those needed to support viable populations in the wild, additional impacts on habitat must be carefully constrained and in many cases, accompanied by mitigative measures.

Comment 85: One commenter stated that the proposed rule does not (but should) address commercial harvest and noted that NMFS recently increased the allowable commercial take of salmon which will unavoidably include some listed fish.

Response: The prohibition against take applies to all activities subject to U.S. jurisdictions, including commercial, recreational, and tribal harvest. The commenter refers to commercial harvest in the marine context, which is evaluated through section ESA 7 consultations. Any commercial activity in non-ocean fisheries would have to be governed by an FMEP in compliance with all of the standards of these rules.

NEPA

Comment 86: Some commenters wanted NMFS to clarify the extent to which NEPA applies to the ESA 4(d) rules.

Response: NEPA applies to the ESA 4(d) rules and, as the proposed rule states, NMFS completed environmental assessments (EAs) for this action. Those EAs were made available upon request and on NMFS' web site during the comment period.

Comment 87: Several commenters suggested that the EAs failed to examine a full range of alternatives (such as the Oregon Plan) or that they did not adequately discuss and evaluate the impacts of the proposed action.

Response: While none of the alternatives focus specifically on the Oregon Plan by name, Alternative B contemplates that a state ''would have developed a fully adequate comprehensive salmon conservation plan ...to ameliorate all factors for decline for ...an ESU.'' The EA assesses what impacts a fully adequate plan would have on the environment, assuming that NMFS recognized such a plan by not applying the take prohibitions to actions in conformance with it. NMFS has reexamined the EAs in light of these comments and believes they explored an appropriate set of alternatives.

Comment 88: One commenter noted that NEPA requires a quantitative assessment of consequences of the proposed rule and that agencies should

ensure the scientific integrity of discussions and analyses in NEPA documentation—including explicit reference to the sources relied upon in making the determination.

Response: The comment would be appropriate to an Environmental Impact Statement (EIS). However, an EA should not contain long descriptions or detailed data. Rather, it should contain a brief discussion of the need for the proposal, alternatives, and the environmental impacts of the proposed action and the alternatives. Hence, NMFS believes the level of detail provided is adequate for an EA, which is expected to be a concise, brief document.

Comment 89: Some commenters asserted that the ESA 4(d) rules will allow significant negative impacts from logging, water withdrawal, agriculture, etc. to continue; hence, NMFS should draft an EIS disclosing these significant impacts. Others stated that the simple act of proposing the 4(d) rules required documentation in an EIS and that the final rules should be delayed until such an EIS has been written.

Response: While such activities may have significant negative impacts on the human environment, they do not occur as a result of the ESA 4(d) rules. The comment argues for regulations that will reduce those negative impacts. As the EAs reflect, the take prohibitions will do that. While the commenters may question whether the take prohibitions are the best tool for reining in those negative impacts, the final 4(d) rules as written do not cause any of those impacts. Therefore, no EIS is required for the 4(d) rules.

Take prohibitions are the sole legally enforceable component of these 4(d) rules, and will impact the environment in a positive manner, phasing in over a long period of time (especially with regard to habitat impacts). The Council of Environmental Quality regulations make clear that the fact that an action will have net beneficial environmental impacts does not excuse preparation of an EIS where there are also significant negative impacts (40 CFR 1508.27—definition of ''significantly''). In this case the EAs reveal no significant negative environmental impacts, and NMFS believes the EAs satisfactorily address NEPA. Economic impacts need be evaluated only when required as part of the process of preparing an EIS, not as a reason for doing one. (See 40 CFR 1508.14, ''This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.'') Finally, a belief that the take prohibitions do not go far enough to stop activities that harm the environment is not an argument for an EIS.

Comment 90: One commenter stated that NMFS incorrectly asserts in the EAs that all environmental effects resulting from actions that respond to the ESA 4(d) rule are the independent analytical burden of state and local governments and NMFS will not need to consider or address them. They further stated that NMFS must grapple with the environmental effects of its proposed actions, many of which will be negative for irrigation, noxious weed control, use of pesticides, livestock grazing, etc.

Response: NMFS agrees that this statement in the EAs should have been drafted more clearly. It must be read in the context in which it appeared. The immediately preceding sentence stated ''In addition, any future regulation, policy, program, or plan that NMFS feels is protective of [listed salmonids] and for which NMFS limits the section 9(a) prohibitions, will further reduce the impacts of the 4(d) rule.'' In that context, the following modified statement would have been clearer: ''All of the potential impacts attributable to any future limits will be due to those state or other governmental regulations, policies, programs, or plans, rather than to the 4(d) take prohibitions.''

Economics/Regulatory Flexibility Analysis

Comment 91: Several commenters raised issues related to E.O. 12866, and stated that NMFS should do a cost/benefit analysis on the promulgation of this rule.

Response: NMFS has prepared a Regulatory Impact Review (RIR), which is available on our web site at www.nwr.noaa.gov. Some of the comments, however, were based on a misunderstanding of the legal effect of this 4(d) rule and were made in the belief that the rule mandated compliance with particular limits. That is not so; this 4(d) rule does not (for instance) mandate watershed conservation plans. This final rule provides a limit on the take prohibitions for habitat restoration activities consistent with watershed conservation plans that meet certain standards, but does not require any person or entity to prepare watershed plans or pursue that limit; they may avoid violating the take prohibition by whatever mechanism they choose.

Comment 92: One commenter stated that in addition to demonstrating how each limit contributed to recovery, NMFS should discuss economic and social impacts of each limit.

Response: It is NMFS' responsibility to assess the economic impacts of the regulation overall; those impacts accrue from the take prohibition, not from the limits. NMFS completed an initial regulatory flexibility analysis (IRFA) and made it available for public comment through the proposed rules. Based on comments received, NMFS has broadened many of the limits to make them available to more jurisdictions, or to simplify the processes associated with them. For instance, the road maintenance limit is now available to any state, city, county or port. The development limit is available for any city, county, or regional ordinances or plans that cover development, or categories such as wetland or shoreline regulation. NMFS has supplemented the IRFA to consider some additional categories of economic activity, such as real estate, as well. The Final Regulatory Flexibility Act concludes that at the present time there is no legally viable alternative to the modified rule that would have less impact on small entities and still fulfill the agency's obligations to protect listed salmon and steelhead.

Comment 93: One commenter stated that NMFS should (and failed to) consult with every state and local entity regarding effects of the rules on those entities.

Response: The huge number of such entities within the geographic range covered by this rule makes such consultation far beyond NMFS' resources. However, NMFS held 25 public hearings, accepted comment on the rules for 60 days, and after publishing the proposed rules, held three workshops for state and local government officials in Olympia and the Tri-Cities in Washington and in Salem, Oregon. More than 150 city, county, and state jurisdictions participated in these workshops.

Comment 94: One commenter stated that the IRFA was inadequate in its analysis of alternatives, and that it ''fails to even list'' the small businesses related to residential and commercial development in its Table of Sectors.

Response: NMFS stands by the IRFA and affirms that it presents as much information on the possible effects of the take prohibition as could be obtained through any reasonable means. Moreover, comments were solicited on the proposed rules, but NMFS received none suggesting additional sources of relevant data. The IRFA Table of Sectors

included Heavy Construction and Highway and Street Construction, which would encompass a large proportion of the activity related to residential and commercial development. We have also added information on real estate and rental leasing to the Final Regulatory Flexibility Analysis. In addition, the RIR discusses the implications of the 4(d) rule in the urban setting—including activities associated with residential and commercial development.

Comment 95: One commenter stated that an independent third party should perform an analysis of the ESA 4(d) rules' economic impacts using economic information developed by the Federal Reserve. The commenter further stated that provisions for landowner compensation and exemption from property tax assessments must also be included as part of this rule.

Response: There is no requirement for third party analyses, nor that NMFS use information from any particular source in its analyses. In fact, NMFS has searched broadly for economic information that might provide more quantitative estimates of the potential costs of avoiding take. The Federal Reserve does not develop such data. NMFS has no authority to provide for landowner compensation or to alter property tax assessments. One of the reasons for the approach taken in this final rule is NMFS' hope that by working with local and state government entities toward comprehensive ESA solutions, there will be smaller impacts on individual actors than might accrue from take-avoidance strategies they might otherwise adopt. Also, as is the case for small landowners under the Forests and Fish Report strategy adopted by Washington and recognized in this final rule, in some circumstances local or state governments may elect to provide offsetting compensation.

Comment 96: Several commenters disagreed with aspects of the IRFA prepared for the proposed rules. A major concern was that the rule requires extensive reporting and paperwork.

Response: This final rule requires only one thing: that actors refrain from taking listed fish. That performance standard does not require reporting. While taking advantage of a limit does require some level of paperwork, that course is not required; an individual or entity may choose simply to modify its actions to avoid take. Nonetheless, NMFS is aware that in some circumstances the paperwork burden is likely to increase and we stand ready to help streamline the process, give technical advice, and in general decrease that burden wherever we can.

Recovery/Delisting

Comment 97: Many commenters raised issues regarding the timing of and relationships between ESA 4(d) rules and recovery planning. Several stated that NMFS should move forward quickly to develop recovery plans for listed species. Some requested that NMFS publish de-listing goals concurrent with the publication of the final 4(d) rules or withdraw the 4(d) rules until a recovery plan was complete. Related comments questioned whether, in the absence of recovery goals, NMFS could adequately assess the contribution to recovery made by the programs approved as limits on the take prohibition. Other commenters wondered whether the establishment of de-listing goals would require NMFS to reevaluate limits already approved or change the standards for evaluating additional limits. One commenter expressed concern that future recovery plans would simply ''rubber stamp'' 4(d) rules and their limits.

Response: Recovery planning, as required by ESA section 4(f), is one of NMFS' highest priorities, and NMFS agrees that it is important to move forward quickly to establish recovery plans for listed species. NMFS does not agree that it is either necessary or advisable to publish de-listing goals and final recovery plans concurrently with, or prior to, the final 4(d) rules.

There are no statutory or regulatory requirements regarding the timing or relationships between 4(d) rules and section 4(f) recovery plans. In fact, the basic structure of the ESA itself provides that the protective mechanisms of sections 7 and 10 take effect upon the listing of a species as threatened or endangered while recovery planning follows its course through subsequent activities. Recovery plans will provide biological goals for recovery and identify an entire suite of actions needed for recovery. Thus, they may provide a more specific framework for future 4(d) rules or amendments, but the essential protective function of 4(d) rules is independent of recovery plans; that function is to prohibit take of listed species where needed. If the 4(d) rules were not promulgated until de-listing goals were developed or recovery plans completed, the species would be placed at unacceptable risk, and more stringent and costly measures would be necessary to save them.

Moreover, by applying the VSP and PFC concepts it is possible to make judgments about the contributions certain programs make to recovery. These judgments will not prejudice the comprehensive recovery planning process.

For habitat actions, NMFS may find that it is not necessary or advisable to apply the take prohibition to programs that will help attain or protect properly functioning habitat. For FMEPs, NMFS may find it is not necessary or advisable to apply the take prohibition when the program contains specific management measures that adequately limit take and otherwise protect the ESU. For Hatchery and Genetic Management Plans (HGMPs), NMFS may find that it is not necessary or advisable to apply the take prohibition when a plan is designed to minimize and adequately limit take and promote species conservation. NMFS believes that these standards are all consistent with recovery, and expects that most programs approved as limits will provide a foundation for later recovery planning measures. NMFS also anticipates that the VSP and PFC concepts will continue to evolve and provide the analytical framework for evaluating potential limits and recovery measures.

Through the process of recovery planning, NMFS may develop more specific information about measures needed for recovery or about specific areas needing more prescriptive attention. In addition, each take limit incorporated into the 4(d) rules includes provisions for continued review of its implementation and effectiveness. Thus, NMFS intends to continually reevaluate the limits. If these evaluations, or information developed through recovery planning, or any other information, indicates that a limit is inadequate for recovery, NMFS will revisit the limit.

Finally, NMFS is moving forward as quickly as resources allow to develop recovery plans. NMFS has appointed Technical Recovery Teams (TRTs) for Puget Sound and for the Willamette/Lower Columbia River Basins and Southwest Washington. These teams have begun to identify delisting goals. To conduct the more policy-oriented aspects of recovery planning, NMFS will work with state, local, tribal, and private entities to craft a recovery planning process suited to specific areas and situations. Formal recovery planning efforts will be expanded to additional geographic domains as resources permit.

Comment 98: Several commenters addressed the issue of federal trust responsibilities to tribes in developing protection and conservation goals, plans, and measures. These commenters held that NMFS needs to make every effort to ensure that treaty rights and trust responsibilities are met through its

regulatory actions, and that thresholds, goals, and recovery plans support healthy, productive, and harvestable fish populations.

Response: NMFS approaches the ESA 4(d) rules as a vital component of conserving the species until the protections of the ESA are no longer needed. These protections will no longer be needed only if the abundance of fish is sufficient to satisfy treaty fishing rights and to fulfill the trust obligations of the United States.

Cumulative Impacts

Comment 99: A number of commenters questioned the reasoning behind NMFS including in the take guidance a category of activities that, while individually unlikely to injure or kill listed salmonids, may collectively have significant detrimental impacts. Commenters asserted that regulating such activities was beyond NMFS' purview. Others questioned how NMFS would enforce the prohibitions when take resulted from such activities.

Response: NMFS agrees somewhat with this comment. The discussion of activities that do not cause take individually but that cumulatively may have significant detrimental impacts on salmonids was intended to be advisory and informative in nature and no enforcement actions in response on these activities were being contemplated. The category of activities raised a number of concerns however, and the language has been struck from the rule. Nonetheless, it is important to note that a myriad of decisions made by individuals and institutions on a daily basis, while negligible in the individual case, may have, in the aggregate, a significant detrimental impact on the ecosystem processes that support salmon and steelhead.

Comment 100: Many commenters raised the issue of cumulative impacts. Some expressed concern that the 4(d) proposed rules did not assess the cumulative impact of all the take limits combined. Some also expressed concern that the individual take limits did not address cumulative impacts of activities covered under that limit. Several commenters requested that the final rules include an analysis of cumulative impacts as well as a mechanism for evaluating cumulative impacts caused by any future take limits. One commenter asked how and when NMFS would provide opportunities for the public to review and comment on ESU-wide assessments of cumulative take.

Response: The suggestions regarding cumulative impacts have great merit, and NMFS is moving toward implementing a method for assessing total take across broad sectors. That function, however, would not be specific to the 4(d) context. Impacts on listed species accumulate from natural conditions as well as from illegal and unauthorized take and from actions to which the take prohibition does not apply because they fall in the realm of some other ESA mechanism (section 10 permits; section 7 consultations, or specific provisions of a 4(d) rule). Cumulative impact assessment is problematic because there are very few methods for adequately assessing cumulative impacts of habitat-modifying activities. Nonetheless, NMFS has explicitly incorporated consideration of cumulative impacts into the 4(d) rules where feasible. For example, FMEPs will evaluate the cumulative mortality of all fisheries, and HGMPs will track the number of listed fish taken as broodstock. In addition, NMFS believes that by requiring habitat-modifying activities within a limit to attain or maintain properly functioning condition, and all activities within a limit to contribute to viable salmonid populations, cumulative impacts are, to an extent, accounted for. Moreover, during the process of developing comprehensive recovery plans, NMFS and recovery teams will address the issue of cumulative impacts more systematically. The public will have the opportunity to comment on ESU-wide assessments of cumulative levels of take during the recovery plan public review process.

Comment 101: A number of commenters recommended ways for NMFS to assess cumulative effects. One commenter asserted that meaningful assessments of cumulative risk at the ESU level would require linkage between VSP and PFC and development of a common method for evaluating the effects various activities have on populations and habitats. Another urged that NMFS adopt comprehensive habitat productivity standards to evaluate cumulative effects of habitat programs granted limits on the take prohibition. One commenter suggested that NMFS require all habitat-modifying activities to account for habitat-modification-related mortality. Another suggested that NMFS focus on cumulative take rather than dealing with take in its various permutations individually. Another suggested that the rules should mandate an annual cumulative take assessment (based on life cycle stages) for each population in an ESU. In addition, they desired that NMFS (a) examine mortality in the various populations and determine whether take from a particular sector is placing them at risk, and (b) separate human-induced mortality from that attributable to fluctuating environmental conditions and thereby adjust take regulations to provide more protection during times of environmental stress.

Response: NMFS agrees that all of these suggestions have great merit and, as mentioned previously, NMFS is moving toward implementing a method for assessing total take across broad sectors. Also, as mentioned earlier, assessing cumulative impacts is a difficult process. In most cases, there are no adequate standards for habitat productivity and developing them is a complex and long-term task. NMFS intends to work with co-managers to develop the necessary standards and assessment techniques. In addition, during the ESA recovery planning process, NMFS will assess the mortality burdens for each ESU and life-cycle stage.

Comment 102: One commenter asserted that limits for urban development should be analyzed within the cumulative impact context.

Response: NMFS agrees that cumulative effects should be an important consideration in analyzing the effects of MRCI development and redevelopment. To the extent that NMFS must prioritize the evaluation process, comprehensive MRCI plans with relatively broader scopes of activities, authorities, effects, and geography (and therefore greater cumulative effects) will generally be evaluated before plans with relatively smaller scopes. Applicants with smaller-scale plans should take particular care that their effects analyses take cumulative impacts into account.

Comment 103: Several commenters questioned whether NMFS had completed requisite cumulative effects analysis under ESA section 7 and NEPA.

Response: NMFS has complied with section 7 consultation requirements on the adoption of the 4(d) rules by consulting both internally and with FWS. In addition, NMFS has completed an EA for this action pursuant to NEPA.

Comment 104: One commenter asserted that the cumulative impacts consideration required by § 223.203(b)(8)(iii)(A) is unreasonable due to lack of clear scientific consensus on how to do so.

Response: Cumulative impacts analysis has been routinely required by NEPA, ESA, and many other Federal and state authorities for several decades and NMFS does not believe it presents an insurmountable obstacle to development of acceptable watershed

conservation plans (WCPs). In fact, it would be difficult to complete an adequate watershed analysis without having considered cumulative impacts. NMFS is confident that state WCP guidelines will be able to offer sufficient technical advice so that entities developing WCPs will be able to meet the cumulative impacts requirement.

Comment 105: Some commenters held that the rules failed to regulate activities consistent with their incremental effects, and that the effect of the rules would be to focus NMFS staff time on urbanized areas, while greater benefit could be gained by identifying habitat areas where the most good could be achieved at the least cost, and then bringing Federal, state, and local resources to bear upon those areas. Other commenters expressed concern that the rules would disproportionately regulate the impacts of habitat modification compared to the impacts of harvest activities.

Response: NMFS does not believe that the 4(d) rules fail to regulate activities consistent with their incremental effects. The 4(d) rules ''regulate'' primarily by putting into place the ESA section 9 take prohibitions. This take prohibition applies to all activities, regardless of their incremental impact on a listed species. The rules then identify certain activities that already conserve the species and for which no additional ESA regulation (i.e., take prohibitions) are necessary. These activities span a broad range and include research, aiding stranded salmonids, managing harvest and hatcheries, and land uses such as forestry, development, and road maintenance. NMFS hopes to continually expand the scope of these limits to encompass additional activities not currently addressed by limits, wherever such efforts are biologically warranted.

Limits for Scientific Research and Rescue/Salvage

Comment 106: Several commenters stated that the ESA 4(d) limit for scientific research activities (research limit) would place excessive reporting requirements on state fisheries agencies and that these agencies lacked the funding and staffing to accommodate the additional workload.

Response: NMFS acknowledges that, as a result of promulgating the take prohibitions, state fisheries agencies will now have a higher level of accountability for reporting take of listed salmonids and that some ESA-related reporting will be new for these agencies. However, all of the affected agencies currently oversee research permit processes for fish sampling in state waters and NMFS believes that the workload associated with this limit should be comparable with state reporting/recordkeeping requirements already in place. Much of the information NMFS is requiring under the research limit is currently generated by the state's permit process, which presently covers all entities (e.g., Federal, academic, private, and other state agency researchers) other than biologists employed by the state fisheries agency. However, these agency biologists typically produce research summaries that NMFS believes could be efficiently translated into the annual state reports supporting this limit.

Moreover, a major impetus for providing the research limit is to allow the state fisheries agencies to continue to oversee and coordinate research efforts for listed salmonids. The ESA's section 10 permitting process does not always facilitate state oversight/coordination and NMFS believes that it is advisable to minimize research impacts by streamlining the research review process in a manner that fosters active participation by state fisheries agencies. It is worth noting that as a result of previous 4(d) rulemaking (50 CFR 223.204(a)(4)), ODFW has successfully coordinated and reported scientific takings per a 1997 research limit involving listed coho salmon in southern Oregon. NMFS will work closely with all of the affected states and research entities to expand on this success while minimizing the reporting workload by incorporating existing state processes into those supporting the 4(d) limit for scientific research.

Comment 107: Some commenters asked whether research involving direct take of listed salmon and steelhead would still require a section 10 permit and whether incidental take would be covered under the ESA 4(d) rule.

Response: Research and monitoring activities involving either directed or incidental take of the 14 ESUs identified in this rule are covered by this 4(d) limit. Therefore, state-approved activities covered by this limit would not need to go through a separate section 10 permit process. However, if the research is not covered by the research limit, then an applicant would need to obtain an ESA section 10 permit before conducting research that could take a listed salmonid.

Comment 108: Several commenters were confused by the language describing provisions under ''Continuity of Scientific Research'' and requested clarification as to what applications were needed and when take prohibitions would become effective.

Response: As described in the proposed rules, NMFS is concerned with the potential for disrupting ongoing scientific research, monitoring, and conservation activities, especially during the coming summer/fall field seasons. Therefore, the agency is providing a temporary limit on the take prohibitions to allow such activities to continue until March 7, 2001 so that the necessary paperwork can be processed. However, to qualify for this ''temporary'' limit, researchers must submit a section 10 permit application to the Assistant Administrator for Fisheries (AA), NOAA by October 10, 2000 for research activities affecting listed fish in any of the 14 salmon or steelhead ESUs identified in this rule. Applicants would be subject to take prohibitions only after their permit application is denied, rejected as insufficient, or the ''temporary'' limit period expires, whichever occurs earliest. Researchers failing to submit an application by October 10, 2000 would be subject to take prohibitions beginning on September 8, 2000 for the seven steelhead ESUs and on January 8, 2001 for the seven salmon ESUs. NMFS will make every effort to respond to applicants in a timely fashion. However, researchers are advised to prepare for unavoidable delays that may result from the anticipated load of section 10 permit applications that will be presented to NMFS.

Parties requesting coverage under the ESA 4(d) limit on scientific research activities should consult with the ODFW, the California Department of Fish and Game (CDFG), the Idaho Department of Fish and Game (IDFG), or the Washington Department of Fish and Wildlife (WDFW) to determine when related applications are due to these oversight/coordination agencies. By October 10, 2000, NMFS will expect these agencies to submit a letter of intent to the AA, NOAA, summarizing the types of research to be covered under the 4(d) limit for any of the 14 salmon or steelhead ESUs identified in this rule. This letter will serve as a placeholder for these agencies (and the entities identified in their letter) until they can submit to NMFS a more comprehensive assessment of scientific research activities planned for the 2001 research season. Take prohibitions for these applicants would become effective after their application for the 4(d) limit is either rejected by NMFS or the ''temporary'' limit period expires, whichever occurs earliest. Applicants failing to submit a letter of intent by October 10, 2000 would be subject to take prohibitions beginning on

September 8, 2000 for the seven steelhead ESUs and on January 8, 2001 for the seven salmon ESUs. NMFS will work closely with the affected state agencies and researchers to select suitable reporting time frames and minimize the disruption of research efforts.

Comment 109: Several commenters requested that NMFS expand the ESA 4(d) limit on scientific research activities to include research by tribal fisheries biologists. Others requested that NMFS include a regulatory obligation for the states and NMFS to include tribes in reviewing scientific research and monitoring efforts subject to the ESA 4(d) limit.

Response: NMFS has provided a separate 4(d) rule for Tribal Plans (including research and monitoring activities) (published elsewhere in this **Federal Register** issue) the purpose of which is to establish a process that will meet the conservation needs of listed species while respecting tribal rights, values, and needs. A tribe intending to conduct research-related actions that may take threatened salmonids could submit a Tribal Plan to NMFS for consideration under the 4(d) rules. In addition, tribes have the opportunity to have tribal research activities covered under the research limit for salmon and steelhead, so long as the activities are in accord with state reporting requirements specified in that limit.

NMFS does not believe it is necessary to include a regulatory obligation under 4(d) that requires states to include a tribal co-manager review and concurrence process for research/monitoring activities. There are ample opportunities—both formal and informal—for Federal, state, and tribal co-managers to coordinate salmonid research and monitoring efforts and NMFS will continue to encourage such collaborative efforts. In addition, NMFS recognizes its responsibilities to confer with the tribes on ESA issues and will use this dialogue to ensure that tribal concerns are addressed. NMFS will make available to interested parties the documents describing the research and monitoring conducted under either the tribal 4(d) limit or the salmon/steelhead research limit.

Comment 110: Some commenters stated that the research limit was too narrowly defined and should be expanded to apply to other state and non-governmental entities (e.g., state water quality agencies, watershed councils, and sportsman groups). Others requested that NMFS clarify what is meant in the research limit by ''oversight'' and ''coordinated.''

Response: NMFS believes that the state fisheries agencies are in the best position to oversee and coordinate scientific research and monitoring efforts involving listed salmonids. While other entities (e.g., other state agencies, academics, consultants, etc.) have considerable expertise in fisheries research, none have the clear management responsibility for salmonids that is vested with the state fisheries agencies. Moreover, NMFS is concerned that expanding this limit to include numerous entities would hinder the coordination of research efforts. NMFS encourages coordination as a means to minimize research impacts on listed salmonids while facilitating data exchange and interpretation.

NMFS agrees that minor modifications to this limit's description will help clarify the agency's intent for ''oversight'' and ''coordination.'' For example, with respect to ''oversight,'' NMFS does not believe that a state fishery agency must directly supervise or inspect every research project. Instead, NMFS intended that research efforts covered by the ESA 4(d) limit should merely be identified and approved by the appropriate state fishery agency. The identification and approval processes should constitute nominal extensions of the pre-existing system for obtaining a state research/collection permit. In addition, NMFS' emphasis on ''coordination'' was to encourage the state fisheries agencies to establish and improve upon mechanisms for organizing research and monitoring of listed salmonids. Such coordination could occur at a state-wide level (e.g., the Oregon Plan for Salmon and Watersheds), at a level addressing a particular ESU (e.g., Washington's Hood Canal and Eastern Strait of Juan de Fuca Summer Chum Recovery Plan), or watershed. No matter what the level, however, the state fisheries agencies will still need to provide NMFS with the requisite annual reports. NMFS will continue to work with the affected states to better define the reporting requirements supporting this limit, maximize the information being gathered on fish and wildlife species (while minimizing impacts on threatened and endangered species), and ensure that sound research proceeds unencumbered by regulatory/permitting requirements.

Comment 111: Some requested that this limit be made available to Federal researchers and asked for clarification on the relationship between this limit and ESA section 10 permits.

Response: NMFS clarifies that Federal research and monitoring activities could be covered under the research limit. Federal lands encompass vast areas of salmonid habitat in the Pacific Northwest and California, and Federal research efforts contribute vital information about these species. Therefore, NMFS believes it is necessary and advisable to provide the opportunity for Federal researchers to receive coverage under the research limit. Such coverage would obviate the need for an ESA section 10 permit for these Federal researchers. Still, in deference to the need for close coordination with state and other efforts (plus the fact that Federal researchers will still need research and collection permits from the state fisheries agencies), Federal research will only be covered under the ESA 4(d) limit when that research is overseen by or coordinated with a state fisheries agency that is willing and able to report on the Federal research effort. Also, it is important to note that coverage under the research limit would not relieve Federal agencies of their duty under section 7 of the ESA to consult with NMFS if actions they fund, authorize, or carry out may affect listed species.

Comment 112: Some commenters contended that NMFS was placing unnecessary constraints on electrofishing as a sampling technique. Several requested clarifications and revisions to specific protocols described in NMFS' ''Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act'' (NMFS, 2000a), in particular they sought revisions in the guidelines pertaining to numeric standards/settings and documenting crew experience and sampling history. One commenter requested that NMFS expand the limit and guidelines to address electrofishing from boats.

Response: NMFS contends that the guidelines are both reasonable and necessary for the conservation of listed salmon and steelhead ESUs. The literature is replete with evidence to support NMFS' concerns that electrofishing can be particularly harmful to salmonids and other fishes (see review by Nielsen, 1998). Before distributing the existing guidelines in 1998, NMFS held a workshop and distributed the subsequent guidelines for peer review. The resulting guidelines reflect reasonable and prudent measures for minimizing the adverse effects of electrofishing. NMFS will continue to encourage researchers to use other less invasive techniques (e.g., traps and snorkeling surveys), but recognizes that electrofishing has utility, or is the only practical alternative in certain study designs.

With respect to specific concerns about the electrofishing guidelines, NMFS disagrees with most of the issues raised and believes that only minor modifications are warranted in these protocols. For example, the agency disagrees with several commenters that requiring conductivity measurements would impose an onerous and costly burden on researchers. It is well known that water conductivity is one of the most critical parameters determining electrofishing impacts and conductivity meters are both inexpensive and readily available. The concerns that NMFS is requiring too much documentation (e.g., logging crew experience and data on sampling results) are also unsound. Most, if not all, researchers record the time spent (e.g., time counters are an integral part of most backpack units) and results of electrofishing surveys (e.g., numbers of fish encountered, injuries observed, site conditions, etc.). These logs aid fish by helping to improve the researcher's technique and can form the basis for training new operators.

With respect to boat electrofishing, NMFS has serious concerns with this technique because it has even greater potential for seriously injuring listed salmonids. For example, the technique can employ electrical output that is an order of magnitude greater than backpack electrofishing units, and environmental conditions can seriously limit a researcher's ability to minimize impacts on listed fish (e.g., adult salmonids in large and turbid stream reaches). NMFS has not developed suitable guidelines for this sampling technique and will continue to request that researchers desiring to employ electrofisher boats apply to NMFS via the ESA section 10 permit process.

Comment 113: Some commenters requested that NMFS clarify which entities would be covered under the limit for rescue and salvage actions and better define what constitutes an ''emergency'' under this limit. One commenter requested that NMFS specifically allow electrofishing under the rescue/salvage limit.

Response: The regulations pertaining to this limit state that rescue/salvage can be conducted by ''any employee or designee of NMFS, FWS, any Federal land management agency, IDFG, WDFW, ODFW, CDFG, or any Tribe.'' A designee of the listed entities is any individual that the Federal or state fishery agency, or other co-manager has authorized in writing to perform the rescue/salvage.

While it is not possible to characterize all scenarios constituting an ''emergency'' for listed salmonids, fish strandings resulting from natural or human-induced events are probably the most common type encountered. For example, an emergency condition may exist as a result of dewatering (e.g., for irrigation), damming, drought conditions, or when listed fish become stranded in channels or ponds following a flood event, landslide, or debris torrent. Chemical spills associated with industrial effluents or vehicular accidents (e.g., train or automobile accidents) have also been known to create an emergency for salmon and steelhead. These are just a few examples of scenarios that the employees or designees might face. Obviously professional judgement will need to be applied at the scene of an emergency to determine if and how listed fish should be rescued.

NMFS concurs that electrofishing is permissible when there is no better technique for safely removing stranded fish under the rescue/salvage limit. However, the electrofishing should be conducted in accordance with NMFS' backpack electrofishing guidelines.

Fishery, Hatchery, and Genetic Management Activities

Comment 114: Some commenters stated that the proposed ESA 4(d) rules potentially grant broad exemptions for taking listed species in hatchery programs and fisheries and that these limitations should be omitted or tightened to better control hatchery and harvest practices.

Response: The final rules establish explicit criteria and standards that hatcheries and harvest activities must adhere to in order for them to be eligible for limitations on section 9 take prohibitions. The criteria include detailed plans, risk assessments, and monitoring and evaluation and are similar to what has been required for section 10 permits in the past. The Fishery Management Evaluation Plans (FMEPs) and Hatchery Genetic Management Plans (HGMPs) will be evaluated using the same standards used to examine section 10 permit applications. The limits for hatcheries and harvest will not decrease the level of protection for listed species.

Comment 115: There was general support for the concepts detailed in the technical document ''Viable Salmonid Populations.'' However, there was much concern over how to apply these concepts in actuality. A number of commenters stated that in most cases there would not be enough information to determine population structure and abundance thresholds. Many commenters thought VSP should be implemented through NMFS' recovery planning efforts.

Response: NMFS realizes that a substantial amount of information needs to be generated in order for FMEPs and HGMPs to be consistent with the ''Viable Salmon Populations'' technical document. Ideally, that information would arise out of the technical phase of the recovery planning process. However, even if all the data are not yet available, the concepts contained in VSP are valid and will still be used to help develop and evaluate FMEPs and HGMPs. Determining ''critical'' and ''viable'' thresholds in the management plans allows actions to be tied to the status of listed fish in a particular population or management unit. If a population or management unit is at critical levels, actions must be strictly controlled and not impede recovery. At viable levels, the population or management unit is healthy and more flexibility exists for fisheries and hatchery management. NMFS will work with the co-managers to apply VSP to the greatest extent possible for any given management unit. As additional monitoring and evaluation are completed in the future and as recovery plans are developed, the FMEPs and HGMPs will be revised.

Comment 116: Some commenters suggested that no progeny of listed fish that were spawned in a hatchery should be considered listed under the ESA.

Response: Listed fish may be taken into a hatchery for spawning as a last resort to conserve the species. Before this can occur, an approved HGMP or ESA section 10 permit must be obtained. The HGMP or section 10 permit specifies the number of listed fish that can be taken into the hatchery. The status of the (artificially propagated) progeny of these fish is determined at the time the species is listed (i.e., stated in the final listing determination). If the hatchery program is part of an ESU where the progeny of listed fish spawned in a hatchery are considered to be listed, NMFS may proceed through rulemaking to delist hatchery progeny once an HGMP or section 10 permit is in place.

Comment 117: Some commenters questioned the strategy of restricting steelhead fisheries to areas where only hatchery-marked steelhead are expected to occur and prohibiting the retention of listed steelhead. It was asserted that this policy could be a disincentive for local recovery efforts because healthy, naturally reproducing populations of fish could not be utilized if the population recovers.

Response: NMFS agrees that recreational fisheries should not be

limited to streams where only hatchery fish are present. NMFS intends to manage fisheries based upon a listed ESU's status and a given fisheries' impacts on that status. The ultimate goal is to recover and maintain natural, self-sustaining ESUs so that ESA protections are no longer necessary. Under the VSP concept, if a steelhead population has recovered to viable abundance levels, more harvest impacts could be allowed than would be advisable for an adjacent population whose status is poor.

Comment 118: Several commenters requested clarification on the meaning and purpose of sanctuary areas, and some questioned the rationale for not requiring the designation of sanctuary areas in FMEPs under the salmon ESA 4(d) rule, but requiring them in FMEPs under the steelhead 4(d) rule. (Note: the proposed 4(d) rule for salmon (65 FR 170, January 3, 2000) was published separately from the proposed rule for steelhead (64 FR 73479, December 30, 1999). The two proposed rules have been combined in this final rule.)

Response: NMFS defines sanctuary areas in the FMEPs as areas that are closed to fishing. NMFS' intent is to provide areas where juvenile and adult fish are not exposed to any fishing-related pressure or mortality (including catch and release fisheries, which can have an associated incidental mortality). Tributary streams or stream reaches that are the primary, core areas where listed fish spawn and rear in a given watershed would be good areas to designate as sanctuaries.

Establishing sanctuary areas is especially important for species (like steelhead) that can spend several years rearing in fresh water and may be exposed to multiple fishing seasons. Juvenile salmon are generally less vulnerable to fishing because they typically emigrate to the ocean by the time they are one year old. However, some juvenile salmon (e.g., sockeye) can also exhibit extended freshwater residence. NMFS agrees that sanctuaries should also be included in the FMEPs developed for the listed salmon ESUs. The extent of the existing (and future) sanctuary areas for juvenile and adult fish will be evaluated on an ESU-by-ESU basis when the FMEPs are reviewed.

Comment 119: One commenter contended that sanctuaries may be difficult to establish in many California river systems (e.g., Central Valley streams) and asked how many sanctuaries would be needed to get NMFS' approval of an FMEP.

Response: NMFS agrees that it may be difficult to designate sanctuaries in the Central Valley system given that the majority of historical habitat is now inaccessible to fish. However, there are other accessible river systems inhabited by the three steelhead ESUs covered by this ESA 4(d) rule that currently do not offer sanctuary protection in critical spawning and rearing habitats. The FMEP process will allow NMFS to work with co-managers in establishing angling sanctuaries in these areas to further protect and conserve steelhead while still allowing appropriate angling opportunities to proceed. The appropriate numbers of sanctuaries will arise out of the FMEP development process.

Comment 120: Some commenters questioned whether the FMEP process is necessary for sport angling and contended that developing elaborate FMEPs is not the best use of limited technical and restoration resources.

Response: The FMEP process will make it easier to work with the co-managers in making sure that sport fishing activities comply with the intent of this limit. While the amount of information that NMFS requires for FMEP approval will be similar to information required for an ESA section 10 incidental take permit, the FMEP route provides a longer-term framework for fisheries management and is thus more efficient over time in addressing recreational fishing impacts on listed species.

Comment 121: Some commenters requested that recreational fisheries in California receive a limit on the take prohibitions because they are likely to have only minor impacts on listed species.

Response: NMFS recognizes that CDFG has instituted conservative fishing regulations in many of the steelhead-bearing streams found in California. These regulations allow for continued angling opportunities, where appropriate, while providing some level of protection for listed steelhead through gear, season, and area restrictions. Although take associated with modern recreational fisheries has not been identified as a major reason for the depressed status of many California steelhead ESUs (NMFS, 1996), there is still a general lack of monitoring from which to derive reliable quantitative estimates of impacts in selected steelhead streams (e.g., Antelope, Deer, and Mill Creeks in the Central Valley steelhead ESU). In addition, take provisions and angling regulations may need to be more restrictive in areas where habitat conditions are not properly functioning and angling pressure would exacerbate the risks faced by a listed population. An approved FMEP would provide the means to identify these monitoring gaps and open the way for agreements with co-managers on instituting appropriate measures and securing funding sources.

Comment 122: NMFS should not require FMEP monitoring that is physically or fiscally impractical.

Response: NMFS agrees with this comment and will make every effort to work cooperatively with co-managers to identify resource monitoring and assessment requirements on an ESU-by-ESU basis. The required level of monitoring will be tied to a population's status and the degree to which a specific fishery poses risks to that population. There is sufficient flexibility in the ESA 4(d) rule to accommodate the immediate staffing and funding shortfalls. One of the integral parts of the FMEP process, however, will be to identify the level of monitoring and assessment needed to adequately address the impacts of recreational angling on listed species in a given ESU. Strategies for prioritizing monitoring needs based on funding and staffing capabilities will be stipulated in letter of concurrence NMFS crafts in response to an approved FMEP.

Comment 123: Several comments addressed the use of barbed hooks in recreational fisheries for trout and steelhead. One commenter questioned the scientific basis for disallowing barbed hooks in adult steelhead fisheries. Other commenters believed that catch and release mortality could be significantly reduced by requiring the use of barbless hooks.

Response: The available scientific data have not shown that using barbless hooks consistently or significantly reduces catch and release mortality in trout and steelhead fisheries, and the ESA 4(d) rule does not require barbless hooks in recreational fisheries. However, NMFS believes certain fishery situations could warrant the use of barbless hooks to minimize potential impacts on listed fish.

Comment 124: Several commenters were concerned with language in the ESA 4(d) rules relating to restrictions on resident species fisheries. Some contended that restrictions should be placed on any fishery (resident or anadromous species) that substantially affects listed fish. Others believed the restrictions to be excessive and stated that NMFS should more fully assess the impacts of resident species fisheries on listed salmon and steelhead.

Response: All fisheries that potentially affect listed salmon and steelhead must be evaluated in the appropriate FMEP. NMFS' intent is to point out the fact that some resident species fisheries can affect listed fish. In these circumstances, the FMEP must

include angling regulations for resident species fisheries that minimize any take of listed species. An FMEP may also include restrictions on anadromous fisheries to ensure that listed species are conserved.

Comment 125: One commenter stated the need to clarify certain definitions used in relation to the hatchery programs. It was asserted that several hatchery programs still have definitions of ''natural'' fish that seriously obscure the differences between wild and hatchery-produced fish. The commenter stated that the HGMPs should address this problem.

Response: NMFS agrees with this comment. Therefore, to clarify, NMFS generally uses the terms ''natural'' and ''hatchery'' to describe the origin of anadromous fish following the definitions found in Bjornn and Steward (1990): hatchery fish are those that, regardless of parent stock, have been spawned, incubated, hatched or reared in a hatchery or other artificial production facility. Naturally produced fish are those that result from natural spawning in streams. As Waples (1991) stated, the terms wild and natural are used synonymously to refer to naturally produced fish without regard to the origin of the parent stock.

Comment 126: The HGMP and FMEP templates should be referenced in the 4(d) rules.

Response: This suggestion has merit and language in this final rule has been duly altered. The templates are available on NMFS' Northwest Region website (www.nwr.noaa.gov).

Comments related to the criteria established for FMEPs and HGMPs

Comment 127: Some commenters questioned the assertion in the harvest limit that at critical threshold levels, harvest actions must not appreciably increase the genetic and demographic risks facing the population. They stated that this policy does not ensure the conservation of listed species and that any populations that are at critical threshold levels should not be put at risk. They asserted that harvest should be very restricted or totally eliminated when a population reaches critical levels.

Response: When a population within a listed ESU is at critical levels, impacts from fisheries must be strictly controlled. No fishery will be allowed under the ESA which jeopardizes the continued existence of an ESU. In some cases it may be necessary to close or curtail fisheries to protect listed fish. The intent of this language was to realize that incidental harvest may occur even under a tightly regulated fishery regime. Anadromous salmonids have a vast migratory distribution and may be incidentally intercepted in fisheries occurring in other regions. NMFS will evaluate FMEPs to ensure that the harvest regime will protect individual populations and allow the ESU to recover before being approved.

Population-level assessments under the ESA are meant to provide information on abundance, productivity, structure and diversity specific to each population, and are essential to determining an ESU's overall health. However, under some circumstances the ESU as a whole may be viable even though some individual populations have not fully recovered. NMFS and the TRTs appointed to help develop de-listing criteria will determine which, where, and to what degree populations within an ESU must have ''viable salmonid population'' status to render adequate ESA protection at the ESU level.

Comment 128: One commenter stated that no transgenic or genetically engineered fish should be allowed in waters where listed fish reside.

Response: No action that jeopardizes the continued existence of listed species is permitted under the proposed 4(d) rules or any other section of the ESA. If NMFS assumes that ''transgenic or genetically engineered fish'' are not native species and determines that their introduction into waters where listed fish reside would not help recover listed species, these fish would likely be prohibited.

Comment 129: Some commenters believed that the final rules should contain citations that demonstrate the validity (including associated risks) of supplementation as a tool for recovery. Some organizations are doubtful that supplementation is effective.

Response: There is considerable scientific uncertainty regarding the extent to which benefit can be derived from supplementing naturally spawning populations with hatchery-produced fish. There are well-publicized examples of domesticated, hatchery-produced salmon and steelhead having negative effects on natural production (Kalama River-Skamania summer steelhead). There are also examples where artificial propagation of the local, indigenous, stock appears to have increased or sustained the number of naturally spawning fish (Imnaha and South Fork Salmon River summer chinook, Upper Columbia steelhead, Rogue River coho). The proposed HGMPs require programs to be designed using the best current scientific knowledge in order to identify and manage risks and provide benefits to the listed species. The HGMPs are required to identify goals, adopt performance standards, and conduct comprehensive monitoring and evaluation in order to help evaluate supplementation success and resolve any uncertainties about the practice.

Comment 130: Some commenters stated that artificial propagation has failed to maintain wild fish populations and all hatchery programs should be discontinued.

Response: Few of the original artificial propagation programs were designed to maintain wild populations. By developing and implementing HGMPs under the ESA, these programs will address wild population conservation and recovery. The risks and negative effects associated with artificial propagation programs are being identified and managed. It is true that artificial propagation has not been able to maintain wild anadromous fish when dam building, habitat loss, and fishing has continued at the established pace. Reforming hatchery practices is advisable, but discontinuing all artificial propagation is not necessary to restore natural fish under all circumstances. In many cases, hatchery programs are managed to minimize risks to wild populations while providing other benefits, such as supplying harvestable numbers of fish to meet treaty trust responsibilities.

Comment 131: One commenter stated that NMFS should not use HGMPs to police compliance with court orders.

Response: NMFS cannot approve an HGMP that does not comply with legal mandates established by statute or court order. This criterion is intended to remind the applicants that an HGMP must be legally as well as biologically complete.

Comment 132: Several comments addressed the experimental nature of supplementation programs and the need for hatchery program goals to protect genetic diversity and individual wild fish stocks. Furthermore, specific concerns were raised about the need to ensure that monitoring and evaluation activities adequately protect listed fish.

Response: NMFS agrees with the general thrust of these comments. Supplementation programs are viewed as being experimental; they can vary from program to program depending on the purpose of the program, the species targeted, stock status, and location. Because of supplementation's experimental nature, HGMPs assume an adaptive management approach for such programs by requiring extensive monitoring and evaluation. These activities must be able to identify deleterious effects on listed fish so the program can be modified. Furthermore,

HGMPs are designed to protect genetic diversity in wild populations (both listed and non-listed) by improving hatchery management, monitoring, and evaluation.

Comment 133: Some commenters questioned how mining wild fish populations for broodstock contributes to recovery when a population is at or below the critical threshold.

Response: When populations reach critical levels and the best available scientific information indicates that the demographic risks are greater than the genetic risks, using artificial propagation to prevent imminent extinction may be the least risky alternative. When populations are at or below the critical level, the only hatchery programs NMFS is likely to approve would be for the sole objective of enhancing the listed species' propagation and survival. If the cause of the decline is short-term, then the hatchery program could be reduced once the population exceeds the critical threshold. If the cause for the decline cannot be remedied in the short-term, the hatchery can act as a genetic broodstock bank and maintain the population until the causes for decline can be addressed.

Comment 134: Some commenters had concerns about NMFS' decision making process in determining whether an HGMP adequately avoids or minimizes any deleterious effects. They desired to know how the standards for this determination would be set and sought an exact description of the monitoring program.

Response: NMFS has developed a detailed HGMP template in collaboration with scientists from the other state and Federal agencies and treaty Indian tribes. The template is available on the NMFS Northwest Region's website at www.nwr.nmfs.gov. The template references many documents that provide guidance on artificial propagation in terms of setting performance objectives, identifying, evaluating, and managing risks, and monitoring results. NMFS' fishery scientists will review the HGMPs for completeness and adequacy. The HGMPs are also being used in sub-basin planning and in the Northwest Power Planning Council (NPPC) funding process where they may be subject to review by fishery scientists employed by Council staff as well as one or more layers of independent scientific review. The HGMPs will be available for public comment and peer review before they are approved. NMFS believes this process will help ensure deleterious effects are being adequately managed. However, all hatchery programs pose some degree of unavoidable risk to natural populations.

Comment 135: One commenter suggested that hatcheries should produce as many fish as possible and held that there is no scientific basis for favoring natural fish over hatchery fish.

Response: NMFS strongly disagrees. Hatchery fish have been identified as one of the factors causing population declines in a number of ESUs. There is a substantial body of scientific evidence to show that hatchery fish can harm natural fish by preying on them, competing with them for food, shelter and mates, displacing them from their native habitats, and creating other effects.

Comment 136: One commenter stated that NMFS failed to address the issue of hatchery structures that can block fish passage.

Response: Each HGMP will include a section describing the hatchery facilities. It will identify passage issues and water withdrawals and screening facilities. If passage is an issue, it can be addressed through HGMP implementation. Passage is also evaluated in ESA section 10 permits for hatcheries.

Comment 137: One commenter recommended that hatchery fish be protected in the 4(d) rules, not just wild fish.

Response: The ESA emphasizes the restoration of listed species in their natural habitats. However, section 3(3) of the ESA specifically recognizes the potential for artificial propagation to help achieve rebuilding objectives. Specific protections for hatchery and natural fish reared in a hatchery are detailed in the HGMPs, especially if the hatchery program is used to supplement natural populations. In certain cases, NMFS has determined hatchery fish stocks to be essential to recovering the ESU and has listed them under the ESA.

Comment 138: One commenter questioned how NMFS will determine whether a catch and release fishery is allowable.

Response: Any selective fishery proposal, including those requiring that listed fish be released after being caught, will be evaluated based on its impacts on listed ESUs. The sum total of all fishery-related impacts on a listed ESU will be considered in terms of its effects on population viability and, when applicable, within the structure of any existing HCP or recovery plan. No fishery that jeopardizes an ESU's continued existence or poses risk to key populations in that ESU will be allowed.

Specific Comments Related to FMEPs

Comment 139: Several commenters desired to know how fishery mortality would be allocated and asked what the mechanism would be for treating ocean, mainstem river, and tributary harvest consistently. They asserted that all fishery related mortality should be accounted for.

Response: Once take prohibitions are in effect, any fishery with the potential to impact listed fish is subject to NMFS' ESA review and approval process. All agencies proposing fisheries that have a potential to affect listed stocks are required to quantify these impacts. These agencies are required to comply with ESA review requirements and obtain take authorization through a 4(d) rule limit, a section 7 consultation, or section 10 permit application. Compliance is determined by tallying all fishery related incidental take from all agencies. Rigorous monitoring and evaluation programs ensure that impacts remain within acceptable limits.

The FMEPs will specify adult escapement targets and harvest rates for each ESU. The purpose of the ESA 4(d) rules is to accommodate the listed species' biological needs, not to allocate harvestable surplus. That is a co-manager responsibility and is undertaken in a number of different venues.

Comment 140: Numerous comments related to specific information and requirements included in actual FMEPs. The comments mainly addressed specific gear and season restrictions and the need to regularly review the FMEPs to ensure that they protect listed species.

Response: The FMEPs will be evaluated under the same standard used for ESA section 10 permits: the proposed action(s) must not jeopardize the continued existence of the listed ESU. The FMEPs will specify the maximum exploitation rates—depending on listed fish abundance—or will specify escapement levels. Each FMEP will include the time frames for regularly reviewing it. Depending on the fishery's location and circumstance, specific angling regulations may be detailed in the FMEP (e.g., minimum length and bag limits for trout fisheries). In other cases (e.g., some salmon fisheries), the specific regulations may be adopted once the exploitation rate or catch quota is determined by examining pre-season run forecasts.

Comment 141: Some commenters stated that maximum escapement objectives and reasonable exploitation rates should be specified in the FMEPs.

Response: NMFS strongly agrees that escapement objectives must be determined for each fish stock and those objectives must be the fundamental drivers of fishery harvest management. Parties to *U.S.* v *Washington* and *U.S.* v *Oregon* should develop—through regional management plans and based on biological requirements and fishery needs—escapement objectives and exploitation rate targets for each stock or management unit.

Comment 142: Several commenters suggested that all hatchery chinook should be marked and that selective fisheries should be required.

Response: From an ESA perspective, several obvious and significant benefits derive from applying a visual mark to hatchery chinook—most notably the ability to easily monitor hatchery stray rates and differentiate hatchery fish from natural fish for stock assessment purposes. In addition, marking all hatchery fish can help managers evaluate productivity among hatchery and wild fish—an important piece of data for recovery planning. Because it now can be accomplished with machines on a massive scale and with relatively little impact on survival, the adipose fin clip achieves these benefits in a very cost-effective and efficient manner.

By enabling selectivity, mass marking may also provide the means for sustainable fisheries—clearly a very important objective. However, because a number of critical issues related to ongoing coded wire tag (CWT) programs remain unresolved, NMFS shares the view of its co-managers that decisions made now to mass mark hatchery chinook are separate from decisions to be made later regarding selective fisheries. Even in cases where NMFS has required that a hatchery production run be mass-marked because of ESA concerns, this does not imply that a selective fishery will subsequently be endorsed. It is not NMFS' policy to require that all hatchery production be mass marked. Rather, our policy is that mass marking must be decided on a case-by-case basis after taking into account, among other things, the specific objectives of the hatchery production, the intended purposes of the mark, and the effect the hatchery production would have on fish listed under the ESA.

Comment 143: One commenter asserted that any rulemaking must ensure that treaties will be respected and that harvestable numbers of fish result.

Response: NMFS agrees. As several court cases have found, conserving and recovering listed stocks under the ESA to the point where they no longer need the protections of the ESA is entirely consistent with the long-term objective of having healthy harvestable populations and the exercise of treaty rights to fish and hunt. From a larger perspective, the greatest improvements in tribal fishing opportunity will not accrue over the short term but through the long-term recovery of the populations. Federal trust responsibility is best fulfilled at this time by engaging in conservative fisheries management. At the same time, hatchery production can be used to provide harvestable fish if such programs can be shown to be consistent with recovering wild fish.

Comments Related to the Time Frame for Developing and Commenting on FMEPs and HGMPs

Comment 144: Numerous agencies, organizations, and individuals commented that enough time must be allowed to develop and review the FMEPs and HGMPs. Several commenters suggested providing a grace period from several months to several years after the final rules are published for developing and approving FMEPs and HGMPs.

Response: NMFS realizes the significant amount of work and time required to develop and process FMEPs and HGMPs. Therefore, NMFS is providing 6 months until take prohibitions go into effect for the listed steelhead ESUs to allow additional time to develop and approve FMEPs and HGMPs.

In addition, NMFS has also provided a transition period of 6 months for recreational fisheries that affect listed steelhead. NMFS has assessed the angling regulations currently in effect for juvenile and adult steelhead in California, Oregon, Washington, and Idaho and has concluded that listed steelhead will be sufficiently protected during this 6-month period. This will allow additional time to develop and approve FMEPs for the steelhead ESUs. Some fisheries and hatchery programs will not need ESA coverage immediately after take prohibitions go into effect because the actions do not affect listed species. NMFS will work with the co-managers to prioritize fisheries and hatchery programs on the basis of how urgently each needs ESA coverage.

Comments Related to the Process of Reviewing/approving/implementing FMEPs and HGMPs

Comment 145: Some commenters suggested that NMFS include a provision for independent scientific review of the FMEPs and memorandum of agreement (MOAs) between NMFS and the action agency.

Response: As stated in the rules, the public will have the opportunity to review and comment on FMEPs and HGMPs for at least 30 days before NMFS acts on them. During this comment period, independent scientific entities are invited to review and comment on FMEPs and HGMPs. NMFS intends to address the public comments with the appropriate co-manager before approving any plan.

Comment 146: Some commenters wanted NMFS to define the ''regular basis'' on which limits will be evaluated. They also wanted to know what the time frames for reporting would be.

Response: NMFS and the individual co-manager will decide on a case-by-case basis the review and evaluation requirements for an approved FMEP or HGMP. The FMEPs and HGMPs will specify the time frames for regularly reviewing the plans and that information will be included in NMFS' letter of concurrence on the management plans. Depending on the circumstances, management plans may be evaluated every year or after analyses are complete. This will reasonably accommodate the time needed to prepare post-season catch and effort reports as well as any analyses the co-managers need for adjusting fishing regulations. However, whenever practical, the evaluation and review process should embrace an annual time frame so that appropriate adjustments may be made before the next fishing season.

Comment 147: Some commenters were concerned that a final HGMP was not available at the time of the proposed rules and that the final criteria for HGMPs may be substantially different from those cited in the proposed ESA 4(d) rules.

Response: The final draft of the HGMP template has been available to co-managers and posted on NMFS' web site since January of 2000. This template includes the information that must be included in the HGMPs for approval. Based on the public comments received, the criteria and the template for HGMPs have not changed substantially in the final rule.

Comment 148: A few commenters stated that the process for approving a hatchery broodstock program should be clearly described.

Response: NMFS believes the process is clearly described in the proposed and final rules. A state or Federal co-manager who wishes to utilize the ESA 4(d) process rather than the section 10 process must develop a detailed HGMP.

The HGMP must address the criteria in the 4(d) rule and follow the template NMFS has provided. The draft HGMP will be made available for public comment for at least 30 days. If NMFS determines the HGMP adequately addresses the established criteria, we will issue a written concurrence or, in the case of a Federal action, we will conduct a section 7 consultation. NMFS believes this process allows the public an adequate amount of time to review and evaluate a hatchery broodstock program before it is approved.

Comment 149: One commenter pointed out that the assumption that average hooking mortality is less than 5 percent is based on only one study (Hooton,1987). Based on the scientific literature, they felt this rate to be low and recommended that NMFS further evaluate hook and release mortality rates in the literature.

Response: NMFS agrees that hooking mortality deserves further investigation and we are committed to doing so. However, for now the 5 percent rate reported in Hooton (1987) seems to constitute a reasonable average. Other studies do show higher mortality rates for salmonids when stream temperatures are elevated (Klein, 1965; Dotson, 1982; Titus and Vanicek, Taylor and Barnharnt, 1997), but for most conditions, Hooton's estimates are reasonably accurate.

Habitat Restoration Activities

Comment 150: One commenter stated that NMFS itself should develop the WCP guidelines.

Response: NMFS believes that the states are in the best position to perform the lead role in developing these guidelines. The geographic scope of this rule covers four states, an area over which biological and geological factors vary considerably. Even more importantly, each state's agencies, regulations, and conservation programs are unique and the WCP guidelines, to be effective, should be designed to fit within that unique context. The states' natural resource agencies have relatively large and expert staffs that are better prepared to interact with the entities that will use these guidelines. For these reasons, this limit remains founded upon the development of state WCP guidelines.

Comment 151: Numerous commenters stated that the interim provisions of § 223.203(b)(8)(ii) (in the proposed rule, 65 FR 170, January 3, 2000) should be extended beyond 2 years, or were too permissive, or too restrictive. Many of these commenters proposed inclusion of specific activities that were not included in the six proposed interim provisions.

Response: NMFS observes that the interim provisions of § 223.203(b)(8)(ii) have been misunderstood to such an extent that NMFS has dropped these provisions from the final rule. The intent of these proposed interim provisions was to acknowledge that getting WCP guidelines and plans in place will require time, and the potential benefit to listed salmonids of allowing certain relatively low risk habitat restoration projects to proceed in the near term might outweigh the risk entailed by those activities not being part of a WCP.

However, the interim provisions had been widely misperceived as detailed regulation of habitat restoration activities. NMFS did not intend to provide for the direct regulation of habitat restoration activities under the terms of this rule and regrets that the earlier proposal created this false impression. Accordingly, NMFS now deems it advisable to simply drop the interim provisions from this final rule. Many low risk activities (e.g., riparian exclosure fencing or native vegetation planting), simply do not carry an appreciable risk of taking. Activities involving instream construction or modification of the streambed or banks require CWA section 404 permits which carry ESA section 7 coverage. All habitat restoration activities will entail less risk and more benefit if they are part of an approved WCP, and NMFS encourages the timely development of WCP guidelines and plans. Habitat restoration projects are less likely to be successful if undertaken without supporting analyses that disclose habitat impairments and absent resource management adjustments within the watershed to redress the underlying causes of those impairments.

NMFS strongly encourages jurisdictions, entities, and citizens to use the habitat restoration guidelines and technical manuals referenced in ''A Citizen's Guide to the 4(d) Rule'' (NMFS, 2000) as readily available techniques to reduce the risks of harm or injury to the listed stocks. In the event that an allegation arose about a potential ESA section 9 violation, NMFS would furthermore take into account the efforts of the watershed group or entity to adhere to the relevant guidelines. Where injury or harm was resulting in such a circumstance, NMFS believes that the proper and most effective remedy would be an orderly adjustment in the relevant guidelines and not the prosecution of a section 9 violation against an individual project.

Comment 152: Several commenters had questions regarding what entities are responsible for developing and implementing WCPs and what state agency is responsible for certifying the plans.

Response: This final rule intentionally leaves these questions unanswered. There are potentially many different entities that may be responsible for developing WCPs in different circumstances—watershed councils, soil and water conservation districts, city or county governments, regional authorities, and so forth. NMFS finds it unnecessary to limit by rule what types of entities may produce and carry out WCPs. Likewise, NMFS leaves it to the individual states to determine the appropriate agencies for developing guidelines and certifying plans.

Comment 153: Many commenters had concerns about the clarity and intent of the approval criteria for the WCP guidelines.

Response: The criteria have been modified in this final rule to make them clearer and more effective.

Comment 154: Some commenters suggested that Federal activities—particularly habitat restoration activities—should receive a limit on the take prohibitions. CDFG suggested that restoration activities conducted under the Department's Fishery Habitat Restoration Program are already covered by their incidental take permit associated with their Corps of Engineer (COE) 404 permit consultation.

Response: Federal agencies that engage in, permit, or fund activities that may affect listed species are required under section 7 of the ESA to consult with NMFS. The ESA contains no provision to exempt Federal actions that involve habitat restoration activities from their section 7 obligations. Habitat restoration activities would only need to seek approval under this limit if they have more than a negligible likelihood of taking listed salmonids, and are not covered by any section 10 permit or section 7 incidental take statement.

Comment 155: Several commenters were concerned that neither the states nor NMFS will have the necessary resources to handle such a large number of written approvals; also, some stated that it was inappropriate for a state or NMFS to review individual projects after having approved an overall plan.

Response: NMFS agrees that the workload associated with approving all individual restoration projects and activities could overwhelm state and NMFS staff resources. In addition, activity-level review could defeat much of the process efficiency gained in the WCP approach. This final rule has been

changed to require only state certification of WCPs, and NMFS' approval of the state guidelines (with a periodic review of the state certification process to ensure that WCPs are adequately analyzed). Provisions for clearly identifying whether particular activities are part of an approved plan must be part of the plans themselves and need not necessarily involve state or NMFS staff directly.

Comment 156: One commenter asserted that it is unclear which criteria NMFS will use in concurring with a state certification of a WCP.

Response: NMFS has amended the final version of this rule to drop the requirement of NMFS concurrence with the certification of individual WCPs. NMFS expects the criteria for the relevant state certifications will be contained in the state restoration guidelines anticipated by this final rule, and will periodically review the states' certification process for appropriate rigor.

Comment 157: One commenter proposed a stepwise approach toward making the transition from the specified activities of § 223.203(b)(8)(ii) interim period to allow development of state guidelines and WCP to the WCP context of § 223.203(b)(8)(i).

Response: NMFS agrees with the commenter, and in response the interim provisions proposed as 223.203(b)(8)(ii) have been deleted from the rule.

Comment 158: One commenter suggested integrating FMEPs and WCPs. Another stated that WCPs should be a part of the recovery planning process and not be evaluated piecemeal.

Response: In essence, the first commenter is suggesting recovery plans, which NMFS agrees are necessary for the conservation of the species and intends to develop for listed salmon. However, NMFS does not believe that completed recovery plans are a necessary prerequisite for all habitat restoration activities. While the existence of an overarching recovery plan could make constituent watershed conservation planning both easier and more effective, it does not follow that adequate watershed conservation planning cannot be done prior to the existence of a recovery plan.

Comment 159: Numerous commenters suggested that local governments should be recognized and allowed to develop guidelines and WCPs without state or Federal approval or the 2-year time line. A few commenters further questioned the scope and scale of the plans or pointed out the burden the process would place on local governments.

Response: The 2-year interim period has been deleted from this final rule, so the time line for developing guidelines and WCPs is now entirely up to the states and the entities desiring to perform habitat restoration activities. NMFS recognizes and appreciates the efforts local authorities are putting forth in watershed planning and habitat restoration projects. Nevertheless, NMFS is not prepared to individually review and approve WCPs, and has dropped that requirement from the final rule. State technical guidance can certainly assist localities in watershed conservation planning, and local governments having the wherewithal to independently develop and implement WCPs should not have undue difficulty navigating the revised approval process.

Comment 160: Several commenters suggested that NMFS should give more recognition to local watershed restoration efforts.

Response: NMFS recognizes the importance of local efforts, and will, by accepting approved watershed assessments, WCPs, and restoration projects developed through cooperative local efforts, acknowledge the contributions made by local watershed conservation groups. These efforts, in conjunction with regional and ESU-specific recovery efforts, will be crucial components of species recovery.

Comment 161: Several commenters pointed out that the assured funding criterion § 223.203(b)(8)(i)(A)(10) could present difficulties for some local governments and watershed councils.

Response: NMFS recognizes that securing funding to reliably implement the WCPs will be a challenging undertaking for many entities. Therefore, NMFS remains open to trying different means to flexibly deal with any difficulties that may arise—particularly with regard to funding.

Comment 162: One commenter objected to a requirement that WCPs be monitored to determine whether they increase listed salmonid productivity. The commenter was concerned that the cost and difficulty of monitoring fish populations would discourage local efforts at habitat restoration.

Response: NMFS realizes it is difficult and expensive to monitor population response and that acceptable methods have generally not been developed. While increased fish productivity is the ultimate goal (from NMFS' perspective) of a WCP, NMFS recognizes that monitoring programs will focus on habitat functions and processes as indicators of watershed health.

Comment 163: One commenter suggested that the **Federal Register** document and comment period prior to NMFS' approval of watershed conservation plan guidelines was unrealistic and contrary to the goal of salmon recovery.

Response: NMFS considers it necessary to provide for appropriate public review of the guidelines that NMFS expects to be addressed in programs submitted for its review. Ensuring complete and open public scrutiny will improve the guidelines through broad input and enhance their value through dissemination to all parties interested in the role of the guidelines in salmon recovery.

Comment 164: A number of commenters suggested there was a need for greater clarification in the scope and purpose of WCPs and watershed analyses, and that more specific direction was required in order to identify the information needs of the plans and analyses.

Response: Analyses and plans must ensure that habitat restoration activities will help place the overall habitat on a trajectory towards a self sustaining condition that provides high quality ecosystem function. NMFS believes that projects planned and carried out based on a watershed-scale analysis and conservation plan are likely to be the most beneficial. Watershed analyses identify problems that are impairing watershed processes and functions and supply base information needed to develop watershed plans and restoration activities. Without the context provided by watershed analyses, habitat restoration efforts are likely to focus on symptoms rather than on the underlying impaired ecosystem processes. NMFS identified 10 standards in the ESA 4(d) rule that characterize the WCPs' scope and intent.

Comment 165: Two commenters indicated that the restoration programs receiving limits on the ESA section 9 prohibitions should be expanded, and further, that the guidance should be made ESU-specific.

Response: NMFS works with state and local jurisdictions and other resource managers to identify programs for which it is not necessary and advisable to impose take prohibitions because they contribute to conserving the ESU or are governed by a program that adequately limits impacts on listed salmonids. This ESA 4(d) rule may be amended to add new limits on the take prohibitions or to alter or delete limits as circumstances warrant. NMFS wishes to continue to work collaboratively with state and local jurisdictions and other resource managers to recognize existing and potential management programs that conserve listed salmonids and meet their biological requirements. As more programs that meet these objectives are developed or identified, greater

geographic and ESU specificity may be possible.

Comment 166: One commenter suggested that WCPs should be required to protect existing high quality habitat.

Response: NMFS agrees that the best available science supports the concept of protecting existing high quality habitat as a cornerstone of a WCP (provided there is high quality habitat within the scope of the WCP). But the criteria provided at § 223.203(b)(8)(iii) will be used only to evaluate state WCP guidelines, which will include much more technical detail. Those guidelines will then be used to evaluate WCPs.

Comment 167: One commenter stated that conservation plans should not be limited to salmonid recovery but must be broad enough to encompass other watershed functions and goals.

Response: In freshwater ecosystems, NMFS' legal authorities are limited to the conservation and recovery of listed anadromous salmonids and their habitats. To help conserve listed salmonids, restoration actions should put the aquatic habitat on a trajectory towards such a naturally self sustaining system (i.e., properly functioning habitat). Properly functioning habitat condition consists of the sustained presence of the natural processes that provide high quality ecosystem function. This complex system is composed of the stream, the riparian area, and upslope areas. All three components of this system are interconnected. The WCPs that guide restoration activities intended to conserve salmonids will also benefit other aquatic, riparian dependent, and upland species and their habitats.

Comment 168: Two commenters suggested that WCPs should also serve as CWA section 303 Total Maximum Daily Loads (TMDLs) for waters listed as impaired. Another suggested that NMFS work with the Oregon Department of Agriculture to coordinate the SB 1010 water quality management process with the watershed conservation planning process.

Response: NMFS believes these are excellent ideas and recommends the approach. However, NMFS does not deem it necessary for the conservation of the species to require such a consolidation of mandates in this final rule. Incorporating water quality management plans, such as SB 1010 plans or TMDL Water Quality Management plans, into the watershed conservation planning effort is a logical and pragmatic approach towards watershed-scale recovery.

Comment 169: Numerous commenters stated that the habitat restoration portion of the rule was too permissive and unclear in its objectives, definition, criteria, and implementation. One commenter believed it would create new programs that would divert attention from the loss of viable habitat which is the root cause of salmonid decline. Others cautioned against allowing state programs a limit on the take prohibitions because existing state programs have proven to be poorly designed and implemented. Several commenters noted general loopholes in the limits section.

Response: The six specific interim provisions of the proposed rule were intended to strike a balance between the possible benefit to listed salmonids of allowing incidental take associated with some habitat restoration activities (while WCPs were being developed) against the risk that those activities might have deleterious consequences that a WCP context would have prevented. To accomplish this, NMFS selected six categories of common and relatively low risk restoration activities, and provided specific guidance and a list of references to further reduce the risk. In light of the numerous comments asserting that the interim provisions were both too permissive and too restrictive, NMFS now concedes that attempting to strike this balance was overly ambitious, and so has deleted the interim provisions from the limit for habitat restoration. Instead, NMFS offers three approaches for individuals who are contemplating habitat restoration actions but are concerned about their take liability: (1) Many of the most effective long-term restoration activities (e.g., riparian livestock exclosure fencing, native vegetation planting, cessation of ground or vegetation disturbing activities, cessation of water diversion) have extremely low probabilities of take, and the actors should not be concerned about take liabilities; (2) most higher-risk activities (e.g., instream construction activities, modification of stream bed or banks) require a CWA 404 permit from COE which provides incidental take permission through section 7 of the ESA; and (3) NMFS recommends the habitat restoration limit on take prohibition included in this rule as the best solution for encouraging effective restoration activities consistent with science based guidelines.

Comment 170: A commenter suggested that the rule holds habitat restoration to a much higher standard (in some cases so high as to render such activities impossible) in terms of avoiding impacts than it requires for development activities.

Response: NMFS disagrees. As stated in the rule, all 13 of the limits contribute to the conservation of listed salmon or are governed by programs that adequately limit their impacts. Moreover the same standard applies to both habitat restoration and development activities; they must achieve PFC of the habitat.

Comment 171: Several commenters believe that NMFS' approach with this limit is to treat habitat restoration activities as a significant threat to the very species they are trying to protect. They believe that NMFS is overreaching its authority and this approach is bureaucratic, unrealistic, unnecessary, and will, as a result, be counterproductive to species recovery. Many stated that NMFS should give a limit to any activity carried out in accordance with state and Federal Laws. Another general sentiment was that NMFS should take a ''hands-off'' approach to restoration activities and simply provide landowners with technical expertise.

Response: We agree that bureaucracy should be kept to a minimum wherever possible and we will consistently seek ways to streamline all the processes this final rule entails. Nonetheless, the final rule includes a limit for habitat restoration activities because, absent the limit, some of these activities could result in prohibited taking. NMFS does indeed want to avoid the tragic irony of having a protective regulation impede habitat restoration that might otherwise contribute to recovery. However, good intentions alone will not adequately protect listed salmonids from the unintended negative consequences of poorly designed habitat restoration projects. Such projects often entail physical modification of currently used habitat of listed salmonids, and have significant potential to further damage impaired habitats and populations. The probability and consequences of project failure can be particular severe when projects attempt to redress the symptoms of habitat impairments before the underlying causes have been reversed. NMFS does not believe that it can disengage from its ESA responsibilities and simply rely on other state and Federal laws for approval to carry out restoration activities.

Comment 172: A few commenters stated that emergency exemptions and a specific scope of rules should be included for bank stabilization and flood repair operations.

Response: NMFS believes altering and hardening stream banks, removing riparian vegetation, constricting channels and flood plains, and regulating flows are primary causes of anadromous fish declines. Section 404 of the CWA—implemented through COE

regulatory authority—provides conditions for permitting stream channel and bank activities. Section 7 of the ESA provides emergency consultation procedures which allow Federal action agencies to incorporate endangered species concerns into their actions during the response to an emergency (50 CFR 402.05). For these reasons, NMFS asserts that existing regulations are sufficiently flexible to enable emergency work without limiting take prohibitions for flood control or repair activities.

Comment 173: One commenter suggested that ''artificial bank stabilization'' should be defined.

Response: We agree that the usage in the proposed rule may have been confusing. The term is meant to be read in context with ''primary purpose'' of the habitat restoration activity definition. The primary purpose of the vast majority of bank stabilization projects is not to restore natural aquatic or riparian habitat processes or conditions, but to protect economic development and then try to ''fix'' habitat remnants in an artificial manner. Such use of artificial materials and means in a piecemeal approach to control a river (or enhance an already controlled river) clearly fits the definition of artificial bank stabilization.

Comment 174: Numerous commenters stated that marine and estuarine habitats should be included in the habitat protections and that connectivity issues and restoration activities should receive similar attention.

Response: NMFS agrees estuarine habitats should be protected, but believes the rule adequately prohibits take and destruction of habitat in marine and estuarine areas. This final rule text provides sufficient examples (i.e., destruction of freshwater and estuarine habitat, altering stream or tidal channels, altering habitat) as take guidance. Lists of how prohibited take may occur are not designed to be exhaustive. Regarding limits for habitat restoration activities in marine/estuarine areas, NMFS believes such projects are of large enough scale and complexity to require project by project technical review at least until watershed planning is complete. NMFS not only agrees with the commenters stating that near shore marine and estuarine habitats should be included in watershed planning but expects that these areas will be included in applicable state guidelines and WCPs.

Comment 175: A number of commenters requested that NMFS define the spatial scales appropriate for watershed analyses and conservation plans.

Response: NMFS recognizes that the four states covered by the ESA 4(d) rule delineate watershed boundaries using different hydrologic and administrative criteria. Consequently, the size of individual watersheds varies among the states and often across programs within a state, though there are a number of basic similarities in terms of watershed function and boundary. Each state's regulations and conservation programs are unique and the WCPs will most effectively conserve anadromous fish and their habitats if watershed boundaries are delineated within each administrative context.

Comment 176: A number of commenters indicated that the state guidance documents developed to help steer restoration activities were not complete or were not ESA compliant.

Response: NMFS recognizes that some of the identified state guidance documents are not finalized, and that some of the included activities may have an appreciable risk of taking. However, NMFS notes that these documents do provide guidance that will reduce risk and increase benefits of habitat restoration activities. Therefore, NMFS still recommends use of the guidance documents: Oregon Aquatic Habitat Restoration and Enhancement Guide (1999); A Guide to Placing Large Wood in Streams, Oregon Department of Forestry and Department of Fish and Wildlife (May, 1995); WDFW's Fish Passage Design at Road Culverts (March 3, 1999); and Oregon Road/Stream Crossing Restoration Guide (Spring 1999). Further, NMFS encourages the states to compile and expand these valuable guidance documents into WCP guidelines which NMFS may find qualifying under § 223.203(b)(8)(iii) of this rule.

Comment 177: Some comments reflected a concern that a report cited by NMFS in the proposed rule, ''Steelhead Restoration and Management Plan for California'' was not a peer-reviewed document and should not be included as guidance.

Response: The report cited in these comments has been adopted as an integral part of the Cal-Fed ecosystem plan, and was subject to extensive peer review before being adopted.

Comment 178: Several commenters questioned how the rule affected Indian Tribes' habitat restoration efforts. Most comments were directed at tribal participation in watershed planning, the potential for conflict between state guidelines and tribal restoration plans, and the lack of specific limits for tribal habitat restoration projects.

Response: As co-managers, the Tribes may participate in any forum for developing conservation guidelines and specific WCPs. Tribes may also submit their own watershed conservation guidelines and plans under the Tribal plan limit. This final rule text describes a process wherein four western states are tasked because NMFS believes the states are responsible for conserving natural resources and native species within their geographic boundaries, and that sufficient infrastructure is in place to expeditiously develop guidelines. No further or specific limits for tribal restoration projects were included in the rule because limits for tribal trust resource management actions that take threatened salmonids are promulgated in a separate rulemaking (65 FR 108, January 3, 2000).

Comment 179: One commenter requested that the removal of sinker logs (which can sometimes constitute a navigational hazard) should receive a limit on the take prohibitions.

Response: Removal of navigational hazards is under the authority of COE and it is their responsibility to consult with NMFS when they propose to engage in an activity that may affect listed salmonids. Federal projects that are approved through ESA section 7 consultation need not also qualify under a 4(d) rule limit.

Comment 180: One commenter suggested that physical fish habitat is not being fully utilized now, and questions the need to create more.

Response: NMFS respectfully disagrees and believes the commenter may have oversimplified the multifaceted problem of habitat productivity as being only a matter of finite capacity. This is a less-than-accurate portrayal of the habitat factors for decline which include both pervasive loss of habitat quality and loss of access to historic habitat because of barriers. It is NMFS' position that habitat degradation and loss have contributed substantially to the decline of anadromous salmonids, and opportunities to regain both habitat function and extent should be sought.

Comment 181: Some commenters felt NMFS should recognize that it may not be advisable or possible to protect or restore historic stream channels/processes, especially in urban settings.

Response: NMFS recognizes that, especially in the urban setting, stream channel habitats are often impaired and are not functioning properly. NMFS would further acknowledge that not all stream segments may be recoverable. However, NMFS maintains that all tools for salmon recovery must be retained in the toolbox. Urban development, open space, or green space designations provide opportunity to protect

important riparian settings. Likewise, urban redevelopment may provide future opportunities for communities to protect or restore historically important stream channel settings.

Properly Screened Water Diversions

Comment 182: One commenter wanted to know who determines whether fish screens are adequate.

Response: The proposed rule states that NMFS' engineering staff will agree in writing that a diversion facility is screened, maintained, and operated in compliance with NMFS- approved Juvenile Fish Screen Criteria. The proposed limit has been revised based on public comments and by the fact that the projected workload associated with approving potentially thousands of water diversion facilities in four states has the potential to overwhelm NMFS staff resources. Consequently, this final rule has been changed to allow NMFS-authorized state agency engineers and screen inspectors to review and recommend screen design certifications and to allow NMFS-authorized screen inspectors to check screens for operational and maintenance compliance. This approval process will augment NMFS staff review. NMFS' Northwest Region (NWR) Juvenile Fish Screen Criteria have been adopted by the Columbia Basin Fish and Wildlife Authority (with participants from the states of Oregon, Washington, and Idaho) for use in waters with anadromous salmonids. NMFS' Southwest Region (SWR) Juvenile Fish Screen Criteria was developed in close coordination with CDFG criteria and the two sets of criteria are compatible. As a result, in all four states affected by this final rule, NMFS' Juvenile Fish Screen Criteria will form the basis for a design review and inspection program. It is proposed that a design specification check-off form and an operational screen inspection report form be developed and used consistently in the four states. NMFS will establish and maintain a data base to record who reviewed a particular screen design, when it was inspected, any problems associated with poorly designed screens being approved, and other relevant information. A key component of this process will be important training to certify inspectors and design reviewers. New language has been added to the regulation to reflect this change.

Comment 183: Some commenters stated that the final rule should acknowledge other screen technologies, especially non-conforming technologies, that have been demonstrated to meet or exceed levels of protection provided by technologies that do meet NMFS screen criteria.

Response: NMFS' engineering staff is frequently asked to assess other screen technologies that are not compliant with NMFS' screen criteria. As a result, NMFS staff has developed a standard protocol for evaluating non-conforming technologies, and has published an agency position paper titled ''Experimental Fish Guidance Devices,'' November 1994, that can be found on the NMFS web page at www.nwr.noaa.gov/1hydrop/exp__tech1.htm. This position paper describes the process NMFS requires for a proponent of experimental technology to demonstrate that a particular non-conforming technology meets or exceeds the level of protection offered by a facility designed using NMFS' Juvenile Fish Screen Criteria. We are not aware of any non-conforming technology that demonstrably protects fish as well as or better than NMFS' criteria for the variety of operating conditions present at any typical water diversion site. If evidence is provided that a non-conforming technology exceeds the level of protection provided by NMFS criteria (as described in the position paper referenced above), NMFS would welcome and approve this technology.

Comment 184: One commenter stated that water withdrawal and diversion activities that take listed salmon should not be granted limits.

Response: The intent of the limit for a water diversion equipped with a screen constructed to NMFS' standard is to minimize take associated with diversion activities once water is diverted from the stream. NMFS intends to enforce the take prohibition for other forms of take that may be associated with water diversions (e.g., dewatering streams, building gravel push-up dams, or creating other passage impediments).

Comment 185: A few commenters stated that requiring screens on all diversions in the Sacramento Delta regardless of whether or not the particular diversion affects steelhead is unjustified.

Response: The intent of providing juvenile fish screen facilities is to minimize the prospect of take once the water has been diverted. It is extremely unlikely that it can be conclusively demonstrated that any particular diversion in a river basin containing listed steelhead will never entrain a listed steelhead. It may sometimes be true that listed fish are not present at a diversion site. It is more likely that—due to a variety of circumstances—the listed fish simply escape observation at a given site. This should not be construed as a total absence of listed fish at a site. It should also be remembered that fish are at critically low levels now and that their presence at diversions and other sites is likely to increase as we proceed with their recovery.

Comment 186: Some commenters asserted that agencies and individuals making good faith efforts to install screens should receive a grace period during which take prohibitions would not be enforced.

Response: NMFS acknowledges that certain complex screen facilities can take several years to finance, design, and construct. NMFS will, therefore, change the proposed rule to include a provision for addressing selected facilities on a case-by-case basis. In these instances, a facility will be eligible for approval under the limit if it has an approved design construction plan and schedule that includes interim operation measures to minimize take. In the event that this schedule is not met, or if a schedule modification is made that is not approved by NMFS engineering staff, or if the screen installation deviates from the approved design, the water diversion will be subject to take prohibitions. In all other cases, as stated in the proposed rule, NMFS will apply the prohibition against take and the limit is available to those who have their diversion facility approved and inspected as stated in this final rule.

Comment 187: One commenter stated that diversion activities that substantially benefit the public should be included in the limit.

Response: It can be argued that any diversion activity confers public benefit to one degree or another. However, water diversions are screened to protect fish and allow them safe egress from the diverted flow—an activity which has little to do with how much the diversion itself benefits the public. Therefore, it is not possible to grant a blanket approval for water diversions—regardless of the amount of benefit that may putatively accrue from an individual facility.

Comment 188: Several commenters asserted that NMFS' screening criteria are not well defined, have not received enough scientific review, and are not flexible enough.

Response: On the contrary, NMFS' juvenile fish screen criteria are extensively detailed and do include sufficient flexibility to deal with site-specific constraints and other concerns. There is no set of juvenile fish screen criteria in the world that is as well defined, or has undergone a higher degree of scientific scrutiny. In addition, NMFS' juvenile fish screen criteria are based on decades of operational

experience that have yielded the best screen designs for salmonid protection in existence. Several state agencies have adopted NMFS' screen criteria and use them in water bodies containing anadromous fish. Lastly, extensive biological screen evaluations have revealed little or no injury to fish when testing screen facilities constructed to NMFS' criteria. This is a primary indicator that NMFS' juvenile fish screen criteria are the best option for protecting listed fish entrained by a water diversion.

Comment 189: One commenter suggested that screened diversions approved under the limit should be reviewed annually as to their physical condition.

Response: This is a good suggestion. NMFS agrees with this comment, and will seek to incorporate this issue into the check-off form and inspection process for a screen design and inspection program that NMFS be developed with the states.

Comment 190: One commenter stated that there should be no violation of the rule for inadequately screened diversions if no take can be proven.

Response: There are no liabilities under ESA if take does not occur.

Comment 191: One commenter thought that ''enforcement official'' should be replaced with ''authorized officer.''

Response: NMFS agrees with this recommendation and has made this language change.

Comment 192: One commenter stated that unscreened agricultural diversions in the Sacramento River delta are not the problem, and that NMFS should concentrate its efforts on the export pumps that dry up the river.

Response: Water diversions in critical habitat have the potential to take listed salmonids and, are therefore, subject to take prohibitions. Even properly screened diversions may take fish by drying up the river. NMFS intends to enforce take prohibitions against diversions that dewater river beds.

Comment 193: One commenter wanted to know if the limit applies to all diversions or just irrigation diversions.

Response: As stated previously, diversion of water in critical habitat has the potential to take listed salmonids and is therefore subject to take prohibitions. Thus the limit applies to all diversions that may affect the listed species.

Comment 194: One commenter identified the need for detailed operation and maintenance guidance if maintenance is to be a requirement in this limit.

Response: NMFS' engineering staff will provide this guidance in general for all juvenile fish screens and will develop site-specific operations and maintenance plans for sites with particular concerns. Our intent is to develop this guidance in conjunction with regional forums on screen activities (e.g., the Fish Screen Oversight Committee of the Columbia Basin Fish and Wildlife Authority). Both the general and the site-specific guidance will be included in the proposed training program for state-authorized officers.

Comment 195: One commenter wanted to know if the ESA 4(d) rule applies to temporary diversions during construction.

Response: NMFS will need to review each situation on a case-by-case basis and the answer will depend on the nature of the diversion. Some construction activities provide a temporary diversion around a construction site, and safely return fish and flow to the stream downstream of the site. Other activities may be required to provide a screen and bypass for a temporary diversion if biological review determines that the activity will place the fish at risk. These decisions will be made when developing a Biological Opinion on a particular in-stream activity.

Comment 196: One commenter urged NMFS not to apply the ESA 4(d) rule take prohibitions in areas upstream of fish barriers.

Response: The ESA 4(d) rule take prohibition applies to the land and ocean area within the 14 designated ESUs. All operators of water diversions within these ESUs need to review their activities and modify any activity that may take a threatened species.

Comment 197: One commenter noted that NMFS does not credit compliance with existing fish protection requirements, but appears to require continual updating to new fish screen standards and individual sign-off from NMFS staff that the screen complies. The commenter also stated that individual screen certification creates certain practical obstacles and NMFS should use this as an incentive and limit the take prohibitions on water use in general, not just on the physical diversion structure.

Response: The intent of the ESA 4(d) water diversion screening limit is to allow a water diversion to be made as safe as possible for listed fish species. Therefore, as new biological information becomes available, it may drive a modification in the screen criteria. Nonetheless, NMFS recognizes that it is unnecessary to retro-fit all existing screen facilities with new features every time new information comes to light because the criteria that are currently in place do an excellent job protecting all salmonid life stages. NMFS has updated their juvenile fish screen criteria only once in the last 11 years. The change came about as a result of new biological evidence that certain previously untested aspects of the old criteria did not adequately protect certain life stages of fish. While this set a standard for new installations, NMFS did not expect retro-fits of recently constructed facilities. NMFS intends to certify screen designs that meet the criteria in place at the time of construction—providing there is no evidence to show that the device is actively taking listed species. In addition, NMFS intends that when screen components need to be replaced due to wear, materials will be used consistent with current criteria. However, if a screen is installed that is out of compliance with NMFS criteria, no limit from the take prohibition will be allowed.

Comment 198: One commenter argued that the practical effect of the ESA 4(d) rules with respect to water diversions is to eliminate incentives for water users to screen their diversions.

Response: The intent of this limit is to offer diverters protection from take enforcement when fish are protected by a properly installed, well-designed, and well-maintained screen. There are clearly other issues (e.g., stream dewatering) that can not be solved by screen installation, and these activities will continue to diminish critical habitat and take listed fish and thus be subject to take prohibition.

Comment 199 : One commenter urged NMFS to apply this limit to water pumping devices as well as diversions.

Response: Water pumping devices are included in this limit.

Comment 200: One commenter wanted to know the details of NMFS' enforcement strategy for non-compliant screens and diversions.

Response: NMFS' enforcement strategy is specified in the section of this final rule entitled ''Take Guidance.'' Unscreened water diversions that cause take of a threatened species are subject to NMFS take enforcement action.

Road Maintenance Activities

Comments Relating to the Oregon Department of Transportation (ODOT) Limit

Comment 201: Several commenters wanted the limit provided to the ODOT for the Routine Road Maintenance Water Quality and Habitat Guide Best Management Practices July 1999 (Guide)

to apply to other cities and counties as well so they would not have to develop their own. Many of these commenters also requested that the limit be expanded to other jurisdictions and departments of transportation—with appropriate revisions to the best management practices (BMPs).

Response: There are two issues reflected in this and other road maintenance comments and NMFS has organized its responses accordingly. The first is that some local jurisdictions would like to adopt the ODOT manual without modification with the understanding that it will provide proper functioning habitat conditions. NMFS agrees that local jurisdictions can adopt the BMPs in the manual; however, the local maintenance programs will need to be examined further to assess any differences between them and ODOT's program and determine how those differences would affect the success in contributing to Properly Functioning Condition (PFC). Also, NMFS and ODOT have spent several years evaluating this program so that NMFS has a clear understanding of ODOT's ability to fulfill training, tracking, and reporting requirements. Other jurisdictions wishing to be covered under this limit would have to demonstrate their ability to make similar commitments and would also need to define the circumstances under which an individual BMP would not be followed.

The second issue pertains to the potential application of the limit to similar activities of other jurisdictions besides ODOT and Oregon cities and counties. NMFS agrees that under the conditions that meet or exceed those described above, the limit for routine road maintenance could be applied to other jurisdictions such as ports, other state transportation agencies, and cities and counties in other states which also, like ODOT, have programs that are determined to meet PFC. This final rule describes the procedure for public comment and determination of inclusion within the limitation on the take prohibition.

Comment 202: One commenter focused on how NMFS would respond if the ODOT program had compliance problems or if new information demonstrated that the program no longer provided sufficient protection. They stated that allowing ODOT to correct the matter ''within a mutually determined period of time'' was too vague a standard.

Response: NMFS agrees, and the wording of the rule has been changed to reflect this comment.

Comment 203: Some reviewers stated that the ODOT guide is completely inadequate to the task of protecting fish in that it allows far too many potentially harmful activities and contains far too much ambiguous language. Similarly a number of commenters asked that ODOT remove the ''hedge'' words (''where feasible,'' etc.) from the road maintenance limit.

Response: NMFS believes that the ODOT program, as designed, will adequately protect the listed species and their habitat. NMFS also intends this final rule to be somewhat flexible in terms of allowing combinations of measures that avoid or sufficiently minimize take. Further, this final rule has been designed to take into account a range of circumstances wherein hard constraints relating to physical, safety, weather, equipment, or other project aspects make it impossible to follow the BMP to the letter. In addition, ODOT has stated that the discretionary language will not be used for convenience or for ease of operation. Therefore, based on NMFS' working relationship with ODOT, we expect that the standard BMPs will be used in most circumstances and situations. To help ensure that this occurs, the ODOT crews will be extensively trained and NMFS will regularly review the program.

Comment 204: One commenter stated that the ODFW, not the ODOT regional environmentalist, should review ODOT activities and decide if they need a biological assessment. The commenter was concerned by the fact that the proposed rule seemed to mandate consultation with the regional environmental coordinator for any in-water work and that the regional environmental coordinator would not have the specialized knowledge to make good decisions during in-water work.

Response: The ODOT coordinates with the ODFW on all in-water work for ODOT bridge repairs, and usually the regional environmental coordinator is involved in the discussions as well. The ''and/or'' language is not intended to exclude the ODFW, but rather to exclude the regional environmental coordinator in instances where that office's participation is deemed unnecessary. Two ODFW biologists are assigned to coordinate exclusively with ODOT on transportation issues and work closely with ODOT regional environmental coordinators. In addition, district biologists assist ODOT on a variety of construction and road maintenance issues and projects.

Comment 205: One commenter stated that the final rule should allow NMFS to approve minor variations from ODOT procedures.

Response: NMFS will exercise reasonable judgement as to whether any minor adjustment in the ODOT road maintenance guidance requires formal approval from NMFS and, therefore, also warrants **Federal Register** publication and public comment. However to stay consistent with the spirit of the limit, any change that would affect the substantive protections the program provides for the environment will require a written approval. NMFS has clarified this point by adjusting the language in the rule.

Comment 206: One commenter provided multiple, detailed, suggestions and critiques of the ODOT program. Each suggestion (in quotations) is covered in the following discussion unless it is discussed in another response.

(1) ''To the maximum extent possible, the manual should contain enforceable standards.'' *Response*: Based on NMFS' extensive review of the ODOT manual, we believe the standards described are enforceable. For example, the first BMP for surface work requires (a) eliminating diesel as a releasing or cleaning agent and using only environmentally sensitive agents, (b) using heat sources to clean tack nozzles, (c) carrying adequate erosion control supplies to keep materials out of water bodies, and (d) disposing of excess material at appropriate sites. All these are enforceable. The same is true for the great majority of the BMPs for other activities.

(2) ''Protective and mitigation measures for work conducted outside of the BMPs should be required, and they should be described.'' *Response*: We agree with portions of this statement. NMFS is continuing to work with ODOT on its maintenance BMPs. In most cases, the changes would have only minor (short-term) or no effects on habitat or fish. In situations where not following the BMPs would adversely affect fish or their habitat, NMFS will work with ODOT to ensure appropriate alternative protective measures and mitigation are applied.

(3) ''The manual should describe an effective, proactive, monitoring program for maintenance projects.'' *Response*: Page 3 of the guide describes ODOT's monitoring program and it is also described in the draft rule. Research is being conducted on several high-risk activities such as culvert cleaning, culvert replacements, and winter maintenance in order to gain more information about maintenance project impacts and develop better BMPs.

(4) ''The manual should contain specific timetables for project reviews and manual updates.'' *Response*: The

manual can be revised by ODOT in consultation with NMFS at any time. The draft rule states that ODOT has committed to review the guide and revise as necessary, at least every 5 years. In addition, ODOT will annually make any necessary BMP modifications.

(5) ''Terms not in common usage should be clearly defined.'' *Response*: Uncommon terms are defined at the beginning of the guide (pages ii through iv).

(6) ''Effective erosion controls and a list of specific techniques should be defined, including a description of methods to be used during emergencies.'' *Response*: Erosion control measures are described as BMPs under each activity. Erosion control measures for emergencies are being developed under a programmatic biological assessment.

(7) ''Mandatory work windows should be defined to protect vulnerable life stages of salmonids.'' *Response*: As stated in the guide (e.g., pages 8, 12, and 13), ODOT must use in-water work windows for all in-water work, unless the ODFW specifically agrees otherwise. The ODFW's in-water work guidelines are part of the guide, in Appendix C.

(8) ''Criteria for the use of bioengineering methods should be described.'' *Response*: The guide states that bioengineering will be used where possible. The ODOT currently has multiple research projects focusing on the use of bioengineering to stabilize slopes; as the results of the research become known, NMFS and ODOT will develop criteria.

(9) ''Riparian management zones should be defined by water type or the criteria used to determine riparian buffer widths [should be] identified.'' *Response*: Standard buffer widths are defined on page iv of the guide. NMFS determined that these widths provide sufficient protection from road maintenance activities. The standard buffers also are implementable by maintenance staff without requiring detailed knowledge of fish presence/absence. Also, ODOT is developing detailed maps that identify sensitive resource areas based on criteria described in the draft rule; they will include information on overstory values, salmonid presence, spawning habitat, off-channel areas, etc. The maps will thus delineate areas where only certain activities may be allowed and the ODOT maintenance staff will modify their activities accordingly.

Comment 207: One commenter asked whether ODOT standards apply to all streams, just water quality limited streams, or just fish-bearing streams.

Response: The ODOT standards apply to all streams. The guide is a statewide document for all maintenance areas, even where no listed fish are present.

Comment 208: Several commenters stated that any routine road maintenance program should have been included in this limit. In particular, routine road maintenance under the Oregon Department of Forestry's Forest Practices Act was suggested.

Response: In the final rule, the limit for road maintenance is broadened beyond the ODOT and Oregon cities and counties to include other jurisdictions within and outside of Oregon based upon the ODOT's manual or which otherwise contribute to achieving or maintaining PFC. However, road maintenance for forestry roads will not be included because the road use and required BMPs are very different for this type of road.

Comment 209: One commenter stated that ODOT should provide criteria and steps to avoid, minimize, and mitigate all impacts when their guidance cannot be followed.

Response: The ODOT's manual is intended to avoid, minimize, and mitigate all impacts. NMFS chose to preserve ODOT's flexibility in choosing the most practicable methods for avoiding, minimizing, and mitigating for impacts because of ODOT's demonstrated commitment to protecting aquatic resources.

Comment 210: Several commenters requested the elimination of the requirement to prohibit any sediment input into the stream resulting from routine road maintenance activities.

Response: The ODOT routine road maintenance program does not prohibit sediment input into streams, although it presents measures to minimize and avoid the input.

Comment 211: One commenter stated that ODOT needs to allow for road repair during winter/wet seasons if emergency conditions dictate.

Response: The ODOT will implement BMPs when practicable, and is responsible for coordinating repair and mitigation measures with appropriate resource agencies in the event fishery or water resources are damaged during a response to an emergency.

Comment 212: One commenter requested that ODOT's program be removed as a limit because the tribes had not been given an opportunity to review it. They stated that the guide was not available for review through the notice.

Response: There were a total of 52 days to review the ODOT guide. It was available through the ODOT web site and the NMFS Northwest Region's website. This was cited in the **Federal Register** document within the section titled Electronic Access. Moreover, it is NMFS' intent to work closely with the tribes of the region to develop improved information exchange and consultation opportunities.

Comments on the Potential Application of the Limit to Other Jurisdictions

Comment 213: One commenter stated that the limit's requirements for developing an Memorandum of Agreement (MOA) under which road maintenance programs for other jurisdictions would be approved are not specific and should be revised to provide clear direction.

Response: NMFS intentionally did not provide a detailed description of what the MOA should include or how it should be prepared. The MOA was intended to provide the mechanism for negotiating with various jurisdictions about how to make sure that their program is equivalent to the effectiveness of ODOT program in contributing to achieving or maintaining PFC, including the tasks of training, tracking, and reporting, and how to best apply comparable measures identified in the ODOT guide. Based on this and other comments, NMFS has revised the regulatory language to require ''a written agreement'' rather than a formal MOA. That written agreement is intended to be flexible enough so there is no need to recreate a new maintenance program or amend the rule.

Comment 214: One commenter suggested that each jurisdiction seeking coverage under the limit for routine road maintenance should be able to develop its own BMPs.

Response: NMFS does not object to the use of BMPs that may be different from those presented in the ODOT guide. NMFS is satisfied that road maintenance activities in compliance with the ODOT guide and program contribute to achieving or maintaining PFC. NMFS expects that each jurisdiction seeking to apply the routine road maintenance limit to its program will clearly demonstrate how that program either applies equivalent measures to those specified in the ODOT guide or how it otherwise contributes to PFC. NMFS does not necessarily expect each jurisdiction to adopt the ODOT guide.

Comment 215: One commenter indicated that compliance and effectiveness monitoring and adaptive management are essential to ensure adequate protection of listed species. This commenter expressed concern that the monitoring may not be adequate and that without specific monitoring criteria

and protocols, the ability to evaluate and modify conservation measures would be limited.

Response: NMFS agrees that monitoring is essential for assuring that the routine road maintenance programs are being properly implemented and that the outcomes are as expected (i.e., contributing to PFC). The monitoring and feedback approach contained in the ODOT program, while being somewhat non-specific, is practicable and can provide enough information to assess compliance and effectiveness.

Comment 216: NMFS received one comment requesting that the limit set standards for road restoration and maintenance, as well as goals for maximum road densities.

Response: This comment is referring to forested watersheds and watershed conservation plans. NMFS is addressing those areas primarily through ESA mechanisms other than the road maintenance limits of the rule (i.e., application of ESA sections 7 and 10 for Federal and non-Federal land management practices, respectively).

Comment 217: One comment stated that there should be no specific limits for roads—just the normal section 9 prohibitions. The commenter was concerned that erosion caused by steep slopes and incorrectly built roads could potentially harm listed salmon populations.

Response: NMFS agrees that soil erosion from road projects can have adverse effects on salmon populations and their habitats. However, the limit only applies to routine road maintenance activities; that is, road repairs that increase the material profile are not covered under the rule. Any activity for which a COE permit is required is not covered by the routine maintenance program and would, in any event, require a section 7 consultation. The ODOT's manual recognizes the problems associated with erosion and addresses erosion repair (MMS 122). To minimize impacts, ODOT requires that erosion repair work consider bioengineering solutions. The maintenance program requires that ODOT maintenance staff take precautionary measures on identified erodible areas—provided the measures can be safely applied. Taken together with other measures ODOT is carrying out (e.g., mapping landslide-prone areas throughout the Oregon coast), the routine road maintenance program protects threatened salmon and steelhead adequately to warrant a limit.

Integrated Pest Management (IPM) Activities in Portland, Oregon

Comment 218: Several commenters indicated that NMFS led them to believe that pesticides would not be considered in this rulemaking and that it was, therefore, unfair to proceed with a limit that accounts solely for the Portland Parks and Recreation (PP&R) program. It was generally expressed that various states, local entities, and agencies should be allowed their own limit on take prohibitions as they relate to pesticide use. Other commenters stated that the PP&R IPM program was inadequate because it was too ambiguous, did not list the actual amounts of pesticide being used, allowed broadcast spraying in riparian buffers, and did not adequately address all potential pathways of contamination.

Response: The PP&R IPM program received a limit at this time because it is a fully-formed, conservative program. NMFS' decision process was based on careful scientific review, investigation of potential pathways of contamination (specific to PP&R-planned activities), and analysis. NMFS concluded that PP&R's plan addresses potential impacts and protects listed salmonids to an adequate degree. A subsequent review process will be conducted one year after PP&R's plan is adopted, additional reviews will occur every two years, and appropriate adjustments will be made throughout the process. As NMFS noted in the preamble to the proposed rule rates of application in buffer strips under the PP&R IPM program range from 8 percent to 100 percent of the individual chemical label restrictions. Moreover, these chemicals are not applied annually, rather only as needed and only as the last resort for controlling unwanted vegetation. Use of the term ''broadcast spraying'' may be misleading. The listed chemicals must be applied at low pressure (which results in large droplets to reduce airborne mists), by hand wand, and only in the area where a dense broadleaf outbreak is occurring—not the entire buffer area.

NMFS believes that with restrictions such as the ones cited here, and looking at the program as a whole, it sufficiently protects the listed salmonids.

Comment 219: One commenter asked if the PP&R IPM was intended to apply to maintenance activities adjacent to all streams, just water quality limited streams, or just fish-bearing streams.

Response: The PP&R IPM applies to all waters—regardless of their designation (moving, water quality compromised, fish/non-fish-bearing)—associated with PP&R managed lands. The use of pesticides near flowing waters is more restricted than near still water (isolated ponds).

Comment 220: One commenter stated that the PP&R IPM should require public notice 48 hours before spraying.

Response: Currently PP&R does notify the public of tree spraying by posting signs in the affected area 24 hours in advance. Also, on any day other types of pesticides are being applied, signs are placed in the park and remain there until the application is complete and any product has dried. It should be noted, however, that this is essentially a public health issue and is, therefore, outside the scope of a rule making for threatened salmon and steelhead.

Comment 221: Several commenters stated that data generated by Oregon's pesticide tracking law should be integrated with the limit.

Response: We agree that it would be useful information. The PP&R's IPM requires an annual report to NMFS. When NMFS reviews PP&R's annual report it will take into account new scientific data on pesticides and their effects on listed fish (and the habitats that support them) when making its decision whether to continue with the program as written or require changes. Over the next year, NMFS will examine the question of whether incorporating the information collected through Oregon's pesticide tracking law (ORS 192.502, ORS 634.306, and ORS 634.372) into the review process would improve that annual analysis.

Comment 222: One commenter requested that NMFS clarify that the PP&R IPM applies only to city parks managed by PP&R.

Response: The commenter is correct. The PP&R IPM program limit applies only to activities conducted by PP&R in Portland city parks.

Comment 223: One commenter expressed concern that the list of chemicals does not appear to take into account chemicals already present in surface waters. It was also stated that NMFS needs to do more research on the impacts pesticides have on anadromous fish.

Response: NMFS agrees with the need for more research in this area. The NMFS Northwest Fisheries Science Center (NWFSC) has recently begun a research program to evaluate in greater detail the effects of pesticides in the environment and their effects on anadromous fish. This program will expand on earlier investigations by the NWFSC and will look at the sublethal effects, synergistic effects, cumulative effects, and effects of inert ingredients in pesticides in the aquatic environment. NMFS will work closely

with EPA and state authorities which have primary responsibility for ensuring the proper use of these products under relevant Federal and state regulatory regimes. Should information come forward to suggest that the otherwise-lawful use of a pesticide harms listed salmonids and is in violation of section 9 or this rule, NMFS anticipates addressing the concern through amendment of this rule, a section 7 consultation with EPA, or corresponding discussions with responsible state authorities. NMFS will employ this approach rather than favor enforcement actions against an individual applicator for the otherwise lawful use of the pesticide. Similarly, if NMFS finds that a limitation on the prohibition against take for the use of selected pesticides is necessary and advisable for the conservation of listed salmonids, it may amend this rule accordingly. Through such a programmatic approach NMFS believes that it will be able to achieve an orderly and comprehensive analysis of the use of pesticides and their effects on listed salmonids.

Comment 224: One commenter suggested that the best approach to evaluating pesticide use under the ESA was a toxicological risk assessment protocol based principally on the dose-response theory. Under this approach, the commenter concludes that ''there is no evidence that take of salmon or steelhead has actually occurred as a result of pesticide use.'' The commenter further asserts that under a program managed by the California EPA's Department of Pesticide Regulation (DPR), ''there should be zero take of any listed fish, including salmonids under NMFS' jurisdiction'' if the protocols developed by the DRP are followed.

Response: NMFS disagrees. The NWFSC has been actively investigating the sublethal effects of pesticides on listed salmonids for more than two years. This research is specifically tailored to examine pesticide effects on the life histories of anadromous fish in California and the Pacific Northwest, and is designed to reduce the considerable scientific uncertainty associated with pesticides. NMFS will use the data arising out of this process to guide future decision making under the ESA.

Comment 225: Several commenters felt the rules may unduly restrict the critical function of noxious weed control. It was suggested that NMFS may be discouraging lawful and environmentally beneficial use of pesticides and herbicides.

Response: NMFS recognizes the importance of noxious weed control. The final rule encourages development of local programs that conserve fish while placing priority on preventing pests (weeds, insects, disease) through non-chemical means. Noxious weeds may be controlled in a number of ways—both with and without the use of herbicides.

Comment 226: Some commenters asserted that a regional invasive species prevention program is needed—one that includes a protocol for addressing expedited responses to invasive species.

Response: NMFS agrees that a regional invasive species prevention program that includes response protocols would be beneficial. Such a program should be developed in cooperation with state and local government agencies, FWS, and EPA.

Comment 227: Several commenters stated that if a pesticide is used according to the directions on the label, or in compliance with various other state or Federal regulations, the applicator should receive a limit on the take prohibitions.

Response: Please see earlier responses on the same general subject. Currently, EPA has not consulted with NMFS on the use of pesticides and their impact on listed anadromous fish and their habitat. Therefore, applying pesticides in accordance with current label directives, EPA guidelines, or interim state measures for pesticide use, is not, de facto, exempt from the possibility of ''take.'' EPA's Office of Pesticides Program will initiate consultation on a limited number of EPA-registered pesticides with NMFS SWR later this year and, depending on the outcome of that process, NMFS will continue to seek such consultations on registered pesticides. NMFS also hopes to begin consultations on those pesticides being considered for registration. In any case, NMFS recognizes that the above restrictions (labels, state guidance, etc.) constitute the only protective guidelines currently available to applicators. Therefore, NMFS will work with the responsible agencies to determine the extent to which restrictions on pesticide use need to be adapted to meet listed salmonid needs and, as that process goes forward, individual applicators may look to those agencies and NMFS to provide appropriate guidance in the future.

Comment 228: Two commenters suggested that NMFS should not rely on local solutions for pesticides, since three of the four states have laws preempting local pesticide regulation.

Response: The PP&R IPM program does not regulate pesticides. It directs the limited application of pesticides by a local government agency. NMFS is confident that PP&R has the authority to direct its application program.

Comment 229: One commenter asked that NMFS clarify its definition of a pesticide to include any substance that is considered an herbicide.

Response: The commenter is correct about the definition of a pesticide. According to EPA, the term ''pesticide'' includes all herbicides, insecticides, fungicides, rodenticides, repellents, disinfectants, and other compounds that kill, control, or otherwise affect pests. The final 4(d) rule will incorporate this definition for the term ''pesticide.''

Municipal, Residential, Commercial, and Industrial Development Limit

a. Clarification of Where and How This Limit Applies

Comment 230: Many commenters requested that the final rule clarify where and how ''this limit'' applies. One commenter asserted that the rule was so unclear as to require that the limit be removed entirely.

Response: NMFS has attempted to remove vague and confusing language from this final rule and to clarify where the limit applies. This particular limit is intended to apply to a broad range of planning efforts, ordinances, regulations, and programs (promulgated by city, county, and regional governments) that conserve listed salmon and steelhead by regulating or otherwise limiting activities associated with MRCI development. Some examples are wetland protection ordinances, shoreline management and development programs, and urban growth management plans. Such activities are not necessarily limited to ''urban'' areas, because city, county, and regional governmental jurisdictions extend to suburban and rural areas as well. NMFS has, therefore, clarified the intended scope of this limit by replacing the term ''new urban density development'' with ''municipal, residential, commercial and industrial (MRCI) development'' to signify activities undertaken by cities, counties, and regional governmental entities in urban, suburban, and rural areas.

Comment 231: One commenter requested that the ESA 4(d) limit for urban development be more streamlined than the process for developing and approving an HCP.

Response: Once local ordinances or plans are approved, the process of implementing MRCI development activities will be very streamlined. The responsibility for subsequent project review, approval compliance, monitoring, and enforcement will rest with the local jurisdiction. NMFS will

review each project's monitoring plans; however, we will not have a role in individual project reviews. In addition, any subsequent ESA section 7 consultations for individual projects for which there is a Federal nexus should be greatly simplified because the consultation will be able to tier off the local jurisdiction's initial analysis. The initial ordinance approval process, while subject to the same review standard as a section 7 consultation or section 10 permit application (i.e., individual ordinances must allow for properly functioning habitat conditions) should be considerably more streamlined than the HCP process because the procedural requirements are less complex (e.g., implementing agreements and NEPA analysis are not required for programs under the take limit).

Comment 232: Several commenters questioned whether the limit applies to the redevelopment of areas that no longer support salmon, and recommended that development along piped segments of low gradient streams should receive a limit on the take prohibitions. Others contended that the rule should address current and ongoing impacts from urban developments.

Response: If a stream segment or aquatic feature does not currently and has not historically supported salmonids, the limit only applies to the extent that downstream areas which do support salmonids rely on appropriate input of ecological element (litter fall, gravel recruitment, cold water, large wood, etc.) from above to achieve PFC. As a local project goes through the permit process, the existing condition of a stream segment within a watershed and its contribution to the ecological conditions essential to listed fish must be taken into account when determining whether and how a redevelopment project meets the local ordinances. It is the local jurisdiction's responsibility to determine how ordinances are implemented during the redevelopment of degraded areas. At a minimum, the ordinances must delineate the process for considering the redevelopment of degraded areas.

Comment 233: Several commenters observed that recovering PFC in large urban core areas is unrealistic.

Response: PFC requires the maintenance of habitat functions essential to the survival and recovery of listed salmonids, wherever those requirements may be found. NMFS agrees that many of the rivers and streams that flow through heavily industrialized or otherwise developed city centers cannot practically be expected in the near-term to resemble a rural river reach in PFC. The concept of PFC recognizes and accommodates the fact that essential ecological functions may be different in spawning and rearing habitats often found in forested environments, for instance, than in migratory corridors, often found in urban settings. Nevertheless, the highly modified habitat in urban settings still must maintain certain ecological functions that remain crucial to the listed species' survival and recovery. In the long run, most parcels in existing urban areas will eventually be redeveloped and restoration opportunities pursued. Urban rivers and streams will thus gradually recover more and more habitat functions over the upcoming decades.

Comment 234: Many commenters contended that the rules should include any (not just new) development (or redevelopment) inside or outside of the Urban Growth Boundary (UGB) or Urban Reserve Area (URA) in any of the affected states. In addition, many others stated that the proposed rule does not adequately distinguish between what is expected of the various kinds of development and redevelopment.

Response: NMFS agrees with the commenters that it is the activity, not necessarily the jurisdiction, that must contribute to achieving or maintaining PFC and has renamed and modified this limit to apply to MRCI development.

Comment 235: Some commenters questioned the need to treat development limits for urban and rural landscapes differently. They argued for the need to accommodate mature urban areas to protect the rural areas.

Response: NMFS agrees that properly functioning habitat, as described in section § 223.203(b)(12)(ii) of the regulatory language of this final rule, must be found in both urban and rural landscapes and is the foundation of this limit. NMFS also understands, however, that development in rural landscapes often requires different considerations than it does in urban landscapes. It is true that some rural developments, such as destination resorts or high-density residential development along rural shorelines, are quasi-urban in nature and have similar effects on salmonids and their habitats. The reverse can also be true. Conserving and restoring functional habitats depends largely on allowing natural processes to increase their ecological function, while at the same time removing adverse impacts from current practices. Those functional requirements apply regardless of where or how development takes place.

Comment 236: Some commenters requested that NMFS make clear that simply because the rule references the Metro Functional Plan, it does not mean that local jurisdictions must follow that proprietary program.

Response: Metro's Urban Growth Management Functional Plan applies only to the Metro region, that is Clackamas, Multnomah, and Washington Counties and the 24 cities in the Portland, Oregon metropolitan area. In order to accomplish the Plan's goals, local jurisdictions will have to take a number of actions—primarily by changing local government comprehensive plans and implementing ordinances. Other jurisdictions wishing to apply for an ESA 4(d) limit must craft their own plans in the context of local circumstances. NMFS notes that Metro has not yet submitted its Urban Growth Management Functional Plan to NMFS for consideration as a limit to the take prohibition, nor has NMFS approved it for that purpose. If Metro applies for a limit under this final rule, it will be evaluated at that time using the review process described in this rule.

Comment 237: Some commenters stated that NMFS should not allow this limit for the Tri-County planning effort in Washington State because Tri-County's proposal is ''business as usual,'' and because the Tri-County implementation process would take too long to provide for salmonid recovery. Others felt linkages should be created between the Urban Development limit and the watershed plans in the proposed Tri-County framework.

Response: NMFS strongly disagrees with the general tenor of this comment and continues to actively support and encourage the Tri-County process. Certainly the negotiations are addressing difficult and complex issues. NMFS remains hopeful that these negotiations will yield agreements consistent with the requirements of the ESA and the listed fish. If Tri-County applies for a limit under this final rule, it will be evaluated at that time using the review process published in this final rule.

Comment 238: One commenter urged NMFS to include a limit for the CALFED-Bay Delta Program and other California programs.

Response: Applying for a limit under the ESA 4(d) rule is a voluntary process. Any jurisdiction or organization may negotiate with NMFS to create a plan and submit that plan for consideration under the MRCI limit. Such entities are also encouraged to bring to the table other types of limits that could be covered in a subsequent 4(d) rule and develop other plans to conserve the listed species.

b. Local Government Cost and Staffing Resources

Comment 239: One commenter expressed concern that the cost of mandatory setbacks would discourage redevelopment of brownfield areas.

Response: Different jurisdictions have the flexibility to tailor riparian management areas in urban brownfield areas to match local needs and conditions, provided they result in properly functioning habitat conditions.

Comment 240: Many commenters expressed concern that smaller jurisdictions do not have the staff and resources needed to comply with the urban development limits. One commenter asked for an explanation of ''adequate funding.''

Response: Ordinances or plans under which activities will be evaluated must be shown to meet PFC as illustrated by the applicable 12 considerations listed in this final rule, including the fact that the jurisdiction in question must demonstrate that it has the ability to enforce, monitor, and fund its obligations under the ordinance.

c. Implementation of the 12 Considerations

Comment 241: Many commenters asked NMFS to clarify how the 12 considerations are to be implemented or applied. Some thought the rule was too cumbersome and onerous, and, therefore, should be delayed or phased in. Others requested that NMFS not allow a phase-in approach.

Response: As the rule describes, NMFS evaluates activities that produce or result in conditions on the landscape that contribute to properly functioning (habitat) condition. Under this limit, NMFS will analyze MRCI ordinances and plans and determine if they will affect a condition on the landscape that is important to essential habitat functions. NMFS will then determine if that effect actually results in conditions that are likely to provide essential habitat functions; if it does, then the ordinance or plan may qualify for a limitation of the take prohibition.

The 12 considerations described in the MRCI development limit describe specific considerations that NMFS will evaluate when looking at MRCI development ordinances and plans. They are based on current scientific understanding of salmonid biological requirements (e.g., Spence *et al.*, 1996; NMFS, 1996). By assessing these 12 considerations, NMFS expects to evaluate the ordinances' efficacy in attaining (or maintaining) essential habitat functions or properly functioning conditions in various physical settings.

Comment 242: Several commenters questioned whether the proposed rule requires compliance with all 12 considerations. Some stated that NMFS should not require that all 12 considerations in the urban limit be satisfied at once.

Response: NMFS acknowledges that in addition to the comprehensive Functional Plan being developed by the Metro regional government in Oregon, other local planning entities are making significant progress in developing innovative MRCI ordinances and programs (e.g., the efforts by the Tri Counties and Kitsap County in Washington State). Not all local or regional governments have the resources to assemble all of their relevant ordinances and planning provisions into a comprehensive MRCI growth management program. NMFS is willing to assist such entities by reviewing individual ordinances or regulations that local governments may choose to submit for consideration under this MRCI limit. NMFS will still apply the 12 considerations in evaluating the likelihood that any given ordinance or regulation will achieve properly functioning conditions for salmonid habitat, but will recognize that some criteria may be less relevant than others—depending on the scope of the particular ordinance.

Because NMFS has a relatively limited number of staff members to review a potentially significant number of individual MRCI planning ordinances, plans, and regulations, NMFS strongly encourages local and regional governments to assemble comprehensive planning packages such as Metro's Functional Plan. Not only is this a more expeditious and efficient approach, it results in a greater likelihood that the MRCI growth management program will protect the full suite of essential habitat functions. In any case, because staff resources are limited NMFS will generally give comprehensive plans rather than individual ordinances priority in the review process.

Comment 243: One commenter requested that NMFS state whether the Metro plan meets the 12 considerations.

Response: Metro has not yet submitted its Urban Growth Management Functional Plan to NMFS for consideration as a limit to the take prohibition, nor has NMFS approved it for that purpose. If Metro applies for a limit under this final rule, it will be evaluated at that time using the review process described in this final rule.

d. NMFS' Approval

Comment 244: Many commenters wanted to know how NMFS would approve applications for inclusion in the take limit. Some commenters suggested that NMFS needs to establish a rule with a minimum set of clear and objective performance standards. Other comments suggested that NMFS should work with state agencies to develop state programs that meet some or all of the limit in order to help small, financially challenged jurisdictions.

Response: The 12 considerations represent evaluation considerations that, if addressed, will help conserve listed salmonids. When a local jurisdiction has an MRCI ordinance or plan it believes will attain or maintain properly functioning conditions, it is encouraged to pursue approval. NMFS will work directly with that entity to develop a product that meets the listed species' needs. However, as noted earlier, local jurisdictions are strongly encouraged to assemble, to the greatest extent practicable, all relevant MRCI development ordinances, regulations, or plans into comprehensive packages that NMFS can review in total. Such an approach is not only more efficient, it has a much greater likelihood of ensuring adequate conservation of salmonid habitat conservation than do individual ordinances. Before approving any application, NMFS will publish a notice in the **Federal Register** announcing the availability of the application for public review and comment. The comment period will be not less than 30 days.

Comment 245: Some commenters desired to know what NMFS meant when it said it would evaluate the limit on a regular basis.

Response: NMFS anticipates that each limit will be monitored during the life of the plan to ensure that management actions are meeting their intended purposes. Specific management actions arising under the plan will be compared with the conservation objectives to ensure consistency with the intent of the plan. Annual monitoring reports will be required and formal plan evaluations will take place at broader intervals—though not greater than 5 years. These evaluations will assess the progress of the plan toward meeting PFC, determine if the management actions are making satisfactory progress toward achieving the stated objectives, ensure that the actions are consistent with current policy, check the original assumptions to see if they were correctly applied, assess whether the impacts were correctly predicted, ensure that the mitigation measures are

satisfactory, and determine whether new data are available that would require altering the plan.

e. Level of Protection Provided

Comment 246: Many commenters asked NMFS to clarify what parts of the limit are binding and what are not.

Response: The final rule does not establish any binding requirements or regulations on any prospective applicants with respect to measures that must be followed to qualify for the take limit. Instead, the final rule defines both the considerations and the process NMFS will use when reviewing any particular ordinance or plan. Once NMFS has reviewed and approved a proposal for inclusion in the limit, the applicant is bound by the substantive requirements established in the subject ordinance or plan; these will be documented in the relevant monitoring, reporting, and enforcement provisions. The final rule clearly describes NMFS' authority to withdraw the limit in instances where the applicant does not diligently implement the approved measures.

Comment 247: Many stated that the Metro Functional Plan was far too restrictive; many others thought it not restrictive enough.

Response: The limit does not hold out the Metro Functional Plan as a standard. Metro has not yet submitted its Urban Growth Management Functional Plan to NMFS for consideration as a limit to the take prohibition, nor has NMFS approved it for that purpose. In fact, NMFS understands that the plan is not yet complete. If Metro applies for a limit under this rule, it will be evaluated at that time using the review process described in this final rule.

Comment 248: One commenter asked NMFS to identify and give take prohibition limits to land development activities that will not harm listed salmonids.

Response: Development actions that do not harm salmonids or their habitats are not affected by the take prohibition. It is not within the scope of this final rule to identify the vast number of activities (including many development activities) that do not harm listed species. However, unmanaged development activities could frequently frustrate attempts to meet the 12 evaluation considerations within this rule and commonly are among those that have historically destroyed or adversely modified critical habitats. On the other hand, activities that are carried out according to limits provided by this final rule are expected to adequately protect listed salmonids and contribute to their conservation.

Comment 249: One commenter expressed concern that giving local jurisdictions a ESA 4(d) limit would not, by itself, help enforce local actions necessary to conserve listed salmonids.

Response: Local jurisdictions are charged with developing and carrying out land use programs within the range of listed salmonids. Although those plans can be revised to be consistent with scientific information used to develop this limit, those same plans are still defined and administered through laws and regulations. Ensuring compliance with these laws and regulations is a key factor in making the plans successful. Eligibility for this limit, therefore, requires those plans to include effective enforcement programs and measures to educate local citizens, encourage voluntary compliance, and detect and address violations.

Comment 250: One commenter asserted that limits for urban development should be analyzed within the cumulative impact context.

Response: NMFS agrees that cumulative effects should be an important consideration in MRCI effects analyses. NMFS is aware that comprehensive MRCI development plans frequently will rely upon watershed scale efforts to achieve PFC by managing rural and agricultural activities in coordination with the cumulative effects of more-urban development. To the extent that NMFS must prioritize the evaluation process, comprehensive MRCI plans with relatively broader scopes of activities, authorities, effects, and geography (and therefore greater flexibility in dealing with cumulative effects) will generally be evaluated before plans with relatively smaller scopes. Applicants with smaller-scale plans should take particular care that their effects analyses take cumulative impacts into account.

f. Habitat Restoration

Comment 251: One commenter felt the new urban density development limit should require local governments to address habitat restoration and rehabilitation.

Response: This limit applies to jurisdictions that carry out development in a way that adequately limits impacts on listed salmonids or contributes to their conservation. Habitat restoration would be applicable when it is necessary to rehabilitate former poorly designed or implemented practices to achieve properly functioning conditions for listed salmonids within that jurisdiction. A specific limit for habitat restoration activities is provided in this final rule.

g. Scientific Justification

Comment 252: Some commenters assert that NMFS has not provided adequate scientific justification for this limit. For example, one comment requested that NMFS justify why the little remaining habitat is important to listed fish, and specifically, what evidence exists to support the need for vegetative cover for the entire length of a stream.

Response: Neither **Federal Register** documents nor U.S. Code is written in scientific style, with its thorough support of factual assertions through citations. Nevertheless, NMFS is confident that its conservation approach in the MRCI limit (and elsewhere in this final rule) is scientifically credible. As starting points for investigators, NMFS recommends Simenstad *et al*, 1982, NRCC, 1996, Palmisano *et al*, 1993, Gregory and Bisson, 1997, Spence *et al*, 1996. Essential features of salmonid habitats include adequate substrate, water quality, water quantity, water temperature, water velocity, cover/shelter, food, riparian vegetation, space and safe passage conditions In designating critical habitats, NMFS considers the following requirements of the species: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, mineral, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing of offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of the species (65 FR 7764, February 16, 2000).

Vegetative cover is good for a number of essential habitat features such as water quality, water temperature, bank stability, stream complexity, cover/shelter, and food. In MRCI environments, the loss of riparian vegetation, coupled with reduced base flows, causes streams to heat up more during summer. In addition, the lack of large wood recruitment combined with increased peak flows heightens the severity of streambed scouring and downstream wood transport. This causes stream channel simplification and greater instability. In order to reverse the downward population trend for listed salmonids and steelhead, the structure and function of their aquatic habitats must be restored to whatever degree possible.

h. Specific Comments on the 12 Considerations

12.i.A. Siting Development

Comment 253: One commenter requested a definition of ''area of high habitat value.''

Response: This phrase refers to an area in a PFC, one that is better functioning than neighboring sites, or one with the potential to be fully restored. To achieve properly functioning condition and high habitat values within an MRCI area, new and existing riparian management areas need to be connected across land ownerships and political jurisdictions whenever land is developed or redeveloped, or brought into an urban growth boundary.

Development activities should be sited in appropriate areas. They should avoid unstable slopes, wetlands, areas already in a PFC, areas that are more functional than neighboring sites, and areas with the potential to be fully restored. A description of particularly sensitive areas is included in the Fish and Forest Report cited elsewhere in this final rule. Such sites include, but are not limited to, soils perennially saturated from a headwall or a sideslope seep or spring, permanent initiation points of perennial (stream) flow, alluvial fans, the intersections of two perennial streams. Development activities in any particular jurisdiction need to be open to coordination with adjacent jurisdictions to ensure landscape-scale conditions are providing essential habitat function.

12.i.B. Stormwater Management

Comment 254: Many commenters asserted that the stormwater consideration was poorly defined and urged that NMFS establish stronger and more specific stormwater standards. Others felt that NMFS should allow flexibility in regional performance standards and in areas where avoiding stormwater impacts is not feasible. One comment suggested replacing stormwater discharge language with specific methods for reducing development effects.

Response: NMFS believes that applying the same standards and considerations to all jurisdictions will not provide the most effective stormwater management because different methods will be more effective in different jurisdictions—depending on factors such as the existing land use in the subbasin or watershed, soil types, rainfall patterns, the degree to which the natural stream hydrograph has been altered, etc. NMFS will consider these factors, methodologies, and standards when reviewing city, county, and regional government ordinances for approval.

Comment 255: Some commenters stated that in an urban setting, it may not be advisable or feasible to protect or restore historic stream hydrographs and meandering processes. They asserted that the phrase ''where feasible'' should be added to stormwater and meander provisions.

Response: It is NMFS' intention to use the best available technologies to determine the most economic means to contribute to the achievement and maintenance of properly functioning conditions. NMFS believes this provision is justified by the need to significantly improve habitat conditions in a given MRCI area and thereby reduce the risks to listed species and ensure that they have an adequate potential for recovery. This can be accomplished by guiding land use practices on the watershed scale in order to reduce impervious surfaces, maintain forest cover, and natural soils. These conditions will, in turn, maintain essential habitat processes such as natural water infiltration rates, transpiration rates, stormwater run-off rates, sediment filtering, and provide hydrographic conditions that maintain and sustain listed salmonids. Where stream hydrographs cannot be restored, compensatory mitigation should be provided to offset the loss of habitat function. Mitigation may include stream corridor restoration by reestablishing pre-development hydrological regimes, controlling pollution sources, stabilizing channel morphologies, engaging in sediment remediation, restoring instream structure, and reestablishing riparian cover. Many of these activities may be guided by watershed scale planning and analysis which includes management of rural and agricultural activities.

Comment 256: Some commenters requested further clarification on peak flows and desired that NMFS place emphasis on biologically significant flows (i.e., water velocities suitable for juvenile fish) instead of peak flows.

Response: Changes in hydrological processes associated with the effects of MRCI development typically result in a flow regime that is more episodic and generates higher peak flows, faster runoff, and reduced base flows during periods without precipitation. Peak flows and base flows are both ecologically significant. Peak flows are primary agents of instream and riparian habitat change during storm events. Base flows sustain aquatic life during dry portions of the year. Other hydrological characteristics are also significant in the design of stormwater systems, for example, the need for water velocities suitable for juvenile salmonids.

Stormwater management programs associated with MRCI development activities should avoid impairing water quality and quantity. Such programs should preserve or move stream flow patterns (hydrograph) closer to historic hydrologic conditions (e.g., peak flows, base flows, durations, volumes, and velocities) that maintain properly functioning habitat conditions. This can be accomplished by guiding land-use practices at the watershed scale in order to reduce impervious surfaces, maintain forest cover, and retain natural soils. These conditions will, in turn, maintain essential habitat processes such as natural water infiltration rates, transpiration rates, stormwater run-off rates, sediment filtering, and provide hydrographic conditions that sustain aquatic life. NMFS will evaluate the effects that city and county ordinances (submitted for approval under this limit) have on relevant hydrologic processes.

12.i.C. Riparian Management Areas

Comment 257: Many commenters were concerned that the riparian management requirements were vague and uncertain. Some viewed this as creating opportunities to evade the intent of the riparian provision, while others wanted NMFS to make clear the fact that the intent was to be flexible and non prescriptive.

Response: The goal of MRCI riparian management is to protect and restore properly functioning riparian condition. To achieve this goal, programs must protect and restore soil quality—including controlling erosion and conserving soil productivity—and ensure that a diverse plant community with a vigorous age class distribution is well-distributed across a riparian management area. This contributes to the natural succession of riparian vegetation, produces habitat features essential to fish health, and protects water quality and flow conditions needed to meet fish habitat needs downstream. In MRCI areas, where riparian areas are usually subject to frequent and pervasive disturbance, the overland movement of nutrients, pesticides, and sediment can be pervasive. Thus, properly functioning MRCI riparian areas must also intercept and immobilize large pollutant loads, reduce runoff energy, and decrease the amount of nutrients being delivered to the streams. NMFS is not able to define the specific management strategies needed to achieve PFC in every conceivable situation involving a

riparian area, particularly where a restoration component is necessary. The basic goal of riparian management is to establish management that allows the riparian area to proceed on a growth and succession pathway toward a mature riparian condition. As noted earlier, mitigation should be developed for functions that cannot be maintained or restored at the site level and may likely require watershed-scale planning. As several commenters requested, this allows different jurisdictions the flexibility to tailor riparian and wetland management to match local needs and conditions.

Comment 258: A large number of commenters addressed the appropriate width of urban riparian management areas. Many comments focused on management area width without regard for location, riparian composition, or management strategy. One comment noted that the width of the urban riparian management area was greater than for lands affected by the Washington forest practice limit.

Response: There are differences in ecological function among riparian areas in the MRCI and forest management settings. These include the relative importance of pollutant and runoff control, the distribution of nutrient cycling and energy flow, and the efficiency of natural recovery mechanisms. However, the need to define properly functioning condition based on the salmon's biological requirements does not vary by land use type.

NMFS' evaluations of MRCI development are significantly influenced by a body of science indicating that essential habitat functions are affected to varying (but significant) degrees by streamside activities conducted within a distance equal to the height of the tallest tree that can grow on that site (known as the site potential tree height). This was the basis for the example in the preamble to the proposed rule that used 200 feet (60.9 meters) as the approximate span of a site potential tree height. The distance is measured not from the stream itself, but from the edge of the area within which a stream naturally migrates back and forth over time (the channel migration zone).

NMFS believes that the most effective way to ensure PFC is to manage MRCI development activities in riparian areas so that their impacts on habitat functions are minimal at the streamside, but may gradually increase with distance from the stream. For example, the riparian area is often managed with two zones, an inner zone that has the highest level of protection and is managed primarily to provide stream function by avoiding disturbance, and an outer zone managed for both stream function and as a transition to more heavily used upland areas. The width of each zone should be commensurate with the functions they are intended to provide and, in MRCI settings, reflect the need to buffer an upland disturbance regime that may be more severe than in forest lands; e.g., more frequent entry by humans and domestic animals or exposure to large amounts of nutrients, pesticides, and sediment.

Comment 259: Several commenters supported a preference for using native riparian vegetation.

Response: NMFS agrees that to meet the final rule's intent, existing native trees and other native vegetation in riparian areas should be protected and native vegetation should be used for restoration plantings wherever appropriate native stock are available to meet the project needs. Non-native stock or seed should only be used after a good faith attempt has been made to locate native materials. If native materials are unavailable, ecologically functional equivalents that are known not to be aggressive colonizers may be substituted. When the scope of an MRCI redevelopment activity may include modifying a riparian site with existing, non-native vegetation, it may be important to restore native vegetation on the site in order to generate the essential habitat functions discussed above.

12.i.D. Stream Crossings

Comment 260: Several commenters requested clearer criteria for culvert installation and bridge crossings. Some wanted the referenced guidance document to be included in the final rule.

Response: Activities such as road and stormwater system design and construction or placement of utility corridors should avoid stream crossings wherever possible in order to prevent soil disturbance and sediment and flow problems in the stream. Where a crossing is unavoidable, the condition of the crossing should minimize its affect by preferring bridges over culverts; sizing bridges to a minimum width; designing bridges and culverts to pass at least the flow level and debris associated with a 100-year flood event; and meet ODFW or WDFW criteria (ODFW's Oregon Road/Stream Crossing Restoration Guide, Spring, 1999 and WDFW's Fish Passage Design at Road Culverts, March 3, 1999). These two documents will be included in a guidance document to be published by NMFS at the same time as this final rule.

Comment 261: Many commenters stated that new and existing linear facilities—such as utility corridors—that cross rivers and streams should be included in this section. Other commenters wanted the language ''wherever possible'' used in the sentence ''avoid stream crossings by roads wherever possible'' to be strengthened or deleted because it creates a loophole. In general, they desired that NMFS establish criteria to determine if a crossing is necessary.

Response: Linear facilities will be included in the stream crossing section of this final rule. As to the necessity of individual crossings, NMFS believes the city or county jurisdictions should perform the lead role in developing these criteria. The applicable state fish and wildlife agency can provide considerable guidance in developing these criteria—both through their existing codes and regulations and in their guidance documents (listed previously in this rule).

12.i.E. Channel Migration Zones

Comment 262: One commenter requested an explanation of the term ''channel migration zone'' (CMZ) and asked that it be linked to landscape features that developers and planners can understand.

Response: A CMZ is defined by the lateral extent of active channel movement along a stream reach over the past 100 years. Evidence of active movement over the 100-year time frame can be inferred from aerial photos or from specific channel and valley bottom characteristics and it was chosen for that reason. Also, this time span typically represents the time it takes to grow mature trees that can provide functional large woody debris to streams. A CMZ is not typically present if the valley width is generally less than two bankfull widths, is confined by terraces, no current or historical aerial photographic evidence exists of significant channel movement, and there is no field evidence of secondary channels with recent scour from stream flow or progressive bank erosion at meander bends.

Comment 263: One commenter requested that no bank hardening be allowed within the CMZ.

Response: Gradual bank erosion and meander migration within the CMZ are important ecological processes that provide geomorphic diversity and enable habitat development. Constructing rigid bank protection structures within the CMZ can prevent properly functioning conditions from being attained because it disrupts natural channel processes and initiates

a cycle of altered erosion patterns flanked by new bank protection measures. The end result can be an entire reach being lined with rigid bank protection.

Where erosion within a CMZ is an issue, bank erosion should be controlled through vegetation, carefully bioengineered solutions, or other innovative ''soft'' bank protection techniques that allow eventual deformation by channel forming processes. Rip-rap blankets or similar hardening techniques should be avoided unless bioengineered solutions are not possible because of particular site constraints. NMFS finds that WDFW's publication, Integrated Streambank Protection Guidelines'' (June, 1998) can provide sound guidance with respect to controlling bank erosion, particularly in the area of mitigation for gravel recruitment.

Comment 264: One commenter supported the concept of protecting the CMZ in streams and floodplains, and requested that the same protection be extended to prevent bank hardening in lake, estuarine, and marine shorelines.

Response: NMFS agrees that natural geomorphic diversity and habitat development are important in all fish-bearing waters, including estuarine and marine systems where the habitat formation processes of many wetlands, shorelines, and waterways have been impaired by the construction of dikes, levees, breakwaters, sea walls, shore protection systems, ports, moorages, and other hardened structures. While the CMZ concept itself is only applicable to systems with a definable channel, it is NMFS' intent to address, avoid, and minimize these habitat threats whenever such structures are constructed or maintained.

12.i.F. Wetlands

Comment 265: One commenter recommended that some wetlands be excluded from the take prohibitions and suggested that not every disturbance in a wetland management area should be prohibited.

Response: Take is prohibited. In general, MRCI development activities should protect wetlands and the vegetation surrounding them and thereby conserve natural wetland succession and function. The reason for this is that wetlands and their associated ecotypes support salmonid food chains, protect shorelines, purify water, store water during flood events, recharge groundwater, and provide specialized habitat for rearing and migrating salmonids.

Drained hydric soils that are now incapable of supporting hydrophytic vegetation because of a change in a water regime are not considered wetlands. The basic goal is to establish management that allows wetlands to maintain ecological functions, not to exclude all disturbances. Activities conducted in a wetland management area are generally subject to the COEs' permitting process under section 404 of the CWA and are necessarily subject to ESA section 7 consultation.

12.i.G. Hydrologic Capacity

Comment 266: Some commenters requested that NMFS clarify its intent in protecting hydrologic capacity.

Response: MRCI development activities should preserve intermittent and perennial streams' hydrologic capacity to pass peak flows. Decreasing the hydrologic capacity of stream systems by filling in the stream channel for road crossings or other development can increase water velocities, flood potential, and channel erosion, degrade water quality, disturb soils and groundwater flows, and alter vegetation adjacent to the stream. Preserving hydrologic capacity provides conditions needed to maintain essential habitat processes such as water quantity and quality, streambank and channel stability, groundwater flows, and riparian vegetation succession. Filling and dredging in stream channels should be avoided unless they occur in conjunction with an unavoidable stream crossing.

Comment 267: One commenter referred to the need to strengthen the Metro Title 3 flood management standards and ensure that riverine and floodplain systems are reconnected and historic floodplain functions are restored.

Response: Metro is currently seeking to improve Title 3 as part of a broader effort to comply with Oregon's statewide Planning Goal 5—the state's land use goal for natural resource and open space protection, and Oregon Administrative Rule 660, Division 23 (the ''Goal 5 rule''). This effort is focused specifically on strengthening Title 3 by adding a program to protect, restore, and enhance fish and wildlife habitat functions in urban riparian corridors. NMFS is participating in a technical advisory role. Metro has not yet submitted its Urban Growth Management Functional Plan to NMFS for consideration as a limit to the take prohibition, nor has NMFS approved it for that purpose. If Metro applies for a limit under this final rule, it will be evaluated at that time using the review process described in this final rule.

12.i.H. Landscaping

Comment 268: Two commenters suggested more stringent standards for landscaping. One commenter proposed that watering, as well as fertilizers, pesticides, and herbicides, be eliminated in urban landscapes; the second proposed regulations requiring the use of native vegetation to reduce water use.

Response: Residential and commercial landscaping can be designed, installed, and maintained to reduce the need for water, herbicides, pesticides and fertilizer. Doing so will help maintain essential habitat processes by conserving water, reducing flow demands that compete with fish needs, and decreasing the amount of chemicals that contribute to water pollution in streams and other water bodies that support salmonids. NMFS relies on local ordinances to address planting and water use.

12.i.I. Erosion/Sedimentation

Comment 269: One commenter asked that NMFS clarify its expectations for erosion control measures.

Response: MRCI development activities should prevent erosion and sediment run-off during and after construction and thus prevent sediment and pollutant discharges. At a minimum, these activities should include detaining flows, stabilizing soils, protecting slopes, stabilizing channels and outlets, protecting drain inlets, maintaining BMPs, and controlling pollutants. This can be accomplished by applying seasonal work limits, phasing land clearing, maintaining undisturbed native top soil and vegetation, etc.

12.i.J. Water Supply/Screening

Comment 270: Several comments called for caution and flexibility concerning water supply development and water diversion screening; others wanted specific restrictions not identified in the proposed rule or mandatory conservation measures for existing developments.

Response: Water supply development can profoundly affect surface and groundwater hydrological processes. Water supply demands should be met without impacting flows needed for threatened salmonids—either through direct withdrawals from the streams or through groundwater withdrawals. Water diversions should be positioned and screened to prevent salmonid injury or death. When existing regulations do not protect the stream flows that salmon need, appropriate additional measures will need to be identified before NMFS

approves an MRCI development ordinance.

12.i.K. Enforcement, Funding, Reporting, etc.

Comment 271: Several commenters supported the monitoring provisions and requested that specific monitoring and implementation programs be described. In contrast, others concluded that by including all necessary enforcement, reporting, and implementation mechanisms NMFS has the potential to be arbitrary in its review of programs. It was suggested that NMFS make the reporting requirement biennial instead of annual.

Response: During the ordinance or plan development and approval process, NMFS will work closely with the local jurisdiction to identify and develop those monitoring mechanisms applicable to the listed species, their habitat, and the local jurisdiction. The existing condition of the salmonid habitat in the watersheds, the rate of projected growth, and other factors will be used as a baseline for the monitoring.

12.i.L. Comply with Other State and Federal Laws

Comment 272: Some commenters wanted to exclude this provision because they believed it exceeded NMFS' authority and because other programs exist to assure compliance.

Response: This subsection notifies applicants of the continuing obligation to ensure that their developments comply with existing state and Federal rules and regulations, as well as with this final rule in order to be eligible for the limit to the take prohibition. Further, an applicant should automatically assume that compliance with the this final rule necessarily meets existing regulatory requirements of local and state agencies.

Forest Management Activities in Washington

Comment 273: Many commenters wanted to know how the April 29, 1999, Forest and Fish Report (FFR) process under section 4(d) of the ESA compares with the process for issuing an incidental take permit issued under section 10. Some of these commenters misunderstood the intent of the FFR and others mistakenly believed that the proposed limit could result in issuing an incidental permit, or could be in effect for 50 years.

Response: While an ESA section 10 HCP may be developed by a non-Federal entity using many of the elements of the FFR, that process has not yet progressed to the point that NMFS has become involved. In other words, it would be many months before anyone applies for an HCP based on the FFR. At this time, NMFS is simply describing the circumstances in which an entity or actor can be certain it is not at risk of violating the take prohibition or of consequent enforcement actions, because the take prohibition would not apply to programs within those limits. And, unlike an HCP with ''No Surprises'' assurances, under the 4(d) limit NMFS may require FFR to be adjusted in the future. For habitat-related limits on the take prohibitions, changes may be required if the program is not achieving desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU.

Comment 274: Some commenters wanted to know what role NMFS played in developing the FFR. Some commenters believed that NMFS had already approved the Washington State Forest Practice Emergency Rules without following the National Environmental Policy Act (NEPA), and other commenters wanted to know how NMFS interacted with other resource agencies.

Response: Along with other natural resource agencies at the state, tribal, and Federal levels, NMFS participated in multi-party negotiations with representatives of the commercial forest managers in Washington State from about April of 1997 through April of 1999. NMFS staff provided technical assistance to several of the work groups tasked with providing the scientific underpinnings for various elements of the FFR. Also, NMFS staff helped explain ESA procedures and implications to the entire negotiating group.

While NMFS considers the product of those negotiations—the FFR—to form the core of the ESA 4(d) limit for forestry on non-Federal lands in Washington State, the report will continue to be worked on for at least another year as various sections are refined and completed. Since the FFR was initially published in April of 1999, NMFS staff have made technical and policy contributions to many sections of the report. These include, but are not limited to, FFR ''Schedules'' (essentially, technical appendices) for Channel Migration Zones, Road Management, Placement of Large Woody Debris, Conversion of Hardwood Riparian Zones, Adaptive Management, and Resource Objectives. Some of these products are formalized as Washington Forest Practice Board (WFPB) Manuals associated with the Emergency Forest Practice Rules (that became effective March 20, 2000) and have been evaluated by the Department of Natural Resources (DNR) in their State Environmental Policy Act Draft Environmental Impact Statement (SEPA DEIS). This document may be found on the web at www.wa.gov/dnr/htdocs/fp/fpb/pdfiles/>.

Comment 275: Many commenters stated that the FFR was severely flawed. As evidence, they pointed to a critique organized by the Society for Ecological Restoration.

Response: Four individual scientists participated in a review of the FFR that the Society for Ecological Restoration (SER) organized. The American Fisheries Society (AFS) was solicited to review SER's material, but contrary to purported statements on behalf of SER, AFS did not review or endorse any of the reviewers' work products. The AFS repeatedly asked the SER to retract and correct this inappropriate attribution. NMFS believes that, while there are useful parts of the report, the Society's critique of the FFR was flawed by: (1) a limited understanding of the policies, regulations and intent of the ESA (2) an incomplete understanding of all the elements of FFR, which led to (3) overstatements of the perceived weaknesses in the FFR.

Specifically, the report claimed the FFR could result in: too-warm waters flowing from some non-fish bearing streams into fish-bearing waters; a failure to identify some small fish-bearing streams; inadequate assessment of some potentially unstable slopes; potential increases in peak-flows that could generally harm incubating fish eggs; a potential reduction in future recruitment of woody material from some non-fish-bearing streams into fish-bearing streams; excessive disturbance and potential delivery of sediments from some non-fish-bearing streams into fish-bearing streams; and, inadequate identification of impaired watershed conditions that may need extra protection. NMFS has assessed all these concerns in light of the best available scientific and commercial information and generally agrees with the environmental analysis summarized in the SEPA DEIS. The moderate environmental risks and levels of uncertainty associated with the FFR are directly addressed by the adaptive management program and the adjustable nature of the ESA 4(d) limit.

Comment 276: Several commenters wanted pesticide application covered in the FFR 4(d) limitation while another commenter did not.

Response: The FFR proposes certain guidelines for pesticide applications

which can be found at: www.wa.gov/dnr/htdocs/fp/fpb/forests&fish.html#APPE. Due to the lack of information on specific pesticides proposed for use under the FFR and their potential for lethal and sub-lethal effects on fish or, as one commenter put it, an uncertainty that needs to be addressed, the limitation associated with the FFR does not include pesticide application.

Comment 277: Many commenters questioned how NMFS could ensure that the riparian conditions essential to listed fish survival and recovery would continue to function properly. Other commenters asked for a clear description of Desired Future Condition for riparian forests. Some commenters asked that NMFS prepare forest management standards for watersheds.

Response: The riparian conservation elements in the FFR are expected to play a major role in conserving salmonids and creating properly functioning conditions on non-Federal forest lands in Washington State. The FFR offers detailed, protective management strategies for three different forest land ecotypes in Washington as well as for fish- and non-fish-bearing streams throughout the state. NMFS has carefully examined these protections and management strategies and has determined that they sufficiently conserve the listed salmonids and will promote properly functioning habitat condition wherever they are applied. The best place to examine these management measures is in the FFR itself.

Comment 278: Many commenters expressed the need to improve forest road management and desired to know how the question was addressed in the FFR.

Response: Forest roads have the potential to affect aquatic ecosystems primarily by: generating and delivering fine sediments from road surfaces and ditches; delivering catastrophic sediment inputs as a result of road-related slope failures; blocking fish passage; disrupting the downstream routing of sediments and organic materials; reducing floodplain function; and modifying hydrologic patterns (e.g., the timing and intensity of peak flows). The FFR addresses all of these effects through a revised set of BMPs that govern road construction and maintenance. The BMPs require road maintenance and abandonment plans, set a functional resource objective for hydrology that virtually disconnects road drainage from stream systems, and describe a functional resource objective for road-related fine sediment that limits the length of ditch line that can deliver sediment to streams. Moreover, the FFR addresses existing road problems by requiring every forest landowner to produce a Washington State DNR-approved Road Maintenance and Abandonment Plan by 2005.

Comment 279: Many commenters did not believe that FFR or the Emergency Rules offered enough protection with regard to unstable slopes to meet the intent of the proposed limit.

Response: The goal for managing unstable slopes is to avoid increasing or accelerating the naturally occurring landslide rate (and volume) in forested watersheds, while still recognizing that mass-wasting is an essential watershed process element that helps route large woody debris through the stream system. The FFR provides general guidance about slope hazard by identifying four primary groups of land forms generally understood to be at risk for failure and potential sediment delivery: (1) Inner gorges, convergent headwalls, and bedrock hollows steeper than 70 percent; (2) toes of deep-seated landslides with slopes steeper than 65 percent; (3) groundwater recharge areas for deep-seated landslides in glacially formed terrain; and (4) the outer bends of meandering channels. The FFR lays out a detailed process for scrutinizing any proposed forest management activities in such areas and commits to support a team of geologists that will map any other potentially unstable areas in the state. NMFS has carefully considered these and the other basic protections set forth in the FFR and believes that the overall approach fits with the limit. Moreover, the risk from unstable slopes is expected to decrease as the adaptive management process moves forward and more and better tools are brought to bear on the problem of avoiding sediment inputs.

Comment 280: Some commenters stated that the FFR used a faulty system of stream-typing. They were concerned that an out dated system would continue to be used and, as a result, some fish-bearing streams might not be identified for protection.

Response: The FFR classifies streams and dictates levels of riparian and other protections based on the potential for a given channel to support fishes of any species at any time of the year. Seasonal fish-bearing streams are protected as if they were perennial. This habitat-based stream typing will replace the current emergency rule as GIS-based stream habitat models are developed (they are expected to be complete by June of 2001). For now, the older stream typing system—based on fish presence—will continue to be used; though it will also be upgraded through the WFPB Emergency Rule (March 20, 2000). Both of these stream-typing systems are based on judgements of the geographic threshold of perennial flow. These are considered to be: a sub-watershed of 13 acres in western coastal Washington, 52 acres in all other regions of Western Washington, and 300 acres in eastern Washington.

Comment 281: How does the FFR address potential changes in watershed hydrology resulting from forest practices? Some commenters thought NMFS should add provisions that would help maintain natural hydrology by limiting clear cut areas. Others urged NMFS to set standards for tree regrowth to aid watershed recovery after logging.

Response: The FFR proposed that forested watersheds be managed to meet a functional Resource Objective (Schedule L–1, in the FFR) that limits increases in peak flows and other consequences of altered hydrology. This Hydrology Resource Objective is still undergoing development. When complete, it will provide both a quantitative approach (based on changes in peak flow intensity or duration) and an objective based on the actual streambed effects arising from altered hydrology to choose from—depending on which is appropriate to the area in question. In both cases the emphasis will be on those watershed portions susceptible to rain-on-snow events, which are widely considered to have the greatest potential to alter peak stream flows and cause scour.

The BMPs for roads are also closely related to this issue (see earlier discussion for road-related hydraulic and sediment effects). In addition, the parties to the FFR committed to revising the Hydrology Module in the Washington Forest Practice Board's (FPB's) Watershed Analysis Methodology in order to more accurately assess hydrologic effects. Finally, the DNR also maintains authority to place conditions on any proposed Forest Practice if there is cause to believe that altered hydrologic conditions are of concern. Therefore, NMFS does not believe it necessary at this time to proposed additional conservation measures relating to watershed hydrology.

Comment 282: Many commenters wanted to know how NMFS would monitor activities under the FFR and use that data to determine whether rule adjustments were necessary.

Response: The FFR proposes an elaborate process for designing and implementing a monitoring and research program that will be used to adapt forestry activities through changes in the Washington Forest Practice Rules.

The adaptive management process is presented in Appendix L of the FFR. Essentially, the protocols and procedures for conducting adaptive management research and monitoring must be approved by Washington's FPB. An administrator employed by Washington DNR will oversee the program and assist the FPB in its task.

Comment 283: Many commenters stated that the FFR was too cumbersome for the Washington DNR to be able to implement.

Response: The Washington Forest Practices Board described their version of FFR, as Alternative 2, in the space of about 18 pages in the SEPA DEIS. The agency responsible for ensuring compliance with state Forest Practices—the Washington DNR—was a full participant in the negotiating process that led to FFR development. Part of their role was to codify and implement the proposed conservation measures. The first step of that codification was completed in February, 2000, when the FFR was substantially instituted as ''emergency rules'' for state forest practices. All necessary Washington DNR staff have undergone extensive training to implement the Emergency Rules.

Comment 284: Several commenters were concerned about the level of protection provided to wetlands, specifically forested wetlands. Other wetland concerns revolved around potential impacts on hydrology and water temperature as a result of effects on groundwater in up-slope areas. Also, some commenters indicated that the CMZ definition was too narrow and would not provide adequate protection.

Response: NMFS agrees there is uncertainty associated with forest management activities near wetlands in terms of how those activities might impact fish habitat. NMFS generally agrees with the analysis provided in the Washington State SEPA DEIS, section 3.5.2. That document can provide commenters with further information about the effects certain activities may have on wetland areas. In addition, the rule outlines the process for adjusting itself—a process that may be necessary as new information on the effects of specific forest practices comes to light.

The March 2000, Board Manual for Emergency Rules, section 2, explains the standard method for measuring CMZs and offers revised Standard Methods guidance. In it, several different ways of determining the CMZ are described, e.g., using historic aerial photographs, intensive field exercises, and field review by a channel expert.

Comment 285: Several commenters wanted the limit to include alternative plans that would give landowners managing areas less than 20 acres in size more operational flexibility. One commenter asked for clarification and requested that the limit include alternative plans that would help avoid any take liability.

Response: Within the construct of the FFR, alternate plans for forest management are allowed provided that the effect of these actions, as judged by the Washington DNR, conserves physical and biological processes at least as well as the base prescriptions. The purpose of this allowance was to address unique sites and operational configurations that required some departure from standard approaches. The alternative plan management strategy must protect public resources at least as effectively as the basic rules. If approved, the prescriptions set forth in an alternative plan would be substituted for the prescriptions in the corresponding basic rules. NMFS includes in this limit only those alternative plans in the FFR that have been demonstrated to adequately protect listed salmon, and that provide NMFS—or any resource agency or tribe NMFS designates—review opportunity at every stage of development and implementation. Such review may cause a plan to be excluded from this limit.

Comment 286: Many commenters asserted that NMFS had no scientific basis to expect that the limit would contribute to salmon recovery.

Response: As the proposed rule states, ''this proposed rule restricts application of the take prohibitions when land and water management activities are conducted in a way that will help attain or protect properly functioning habitat. Properly functioning habitat conditions create and sustain the physical and biological features that are essential to conservation of the species. Properly functioning habitat conditions are conditions that sustain a watershed's natural habitat-affecting processes (bedload transport, riparian community succession, precipitation runoff patterns, channel migration, etc.) over the full range of environmental variation, and that support salmonid productivity at a viable population level.'' After carefully evaluating the various components of the FFR—as described in the proposed rule and discussed in pervious responses, NMFS has concluded that applying the FFR will help maintain and attain properly functioning habitat conditions and will, therefore, contribute to recovery.

Comment 287: A number of commenters suggested that NMFS should include the state forest practice rules from Oregon, California, and Idaho in the limit.

Response: At the time the limit was proposed for the FFR in Washington state, NMFS had not been presented with any other forest practices regulatory framework that was designed to conserve listed anadromous fish. For several years, NMFS has been discussing with state agencies in Oregon and California ways to strengthen the fish conservation aspect of forest practice rules in those states. NMFS wishes to continue working with all affected governmental entities in strengthening, identifying, and creating management programs that fulfill the listed salmonids' biological requirements. For programs that meet those needs, NMFS can provide ESA coverage through 4(d) rules, section 10 research and enhancement permits or incidental take permits, or through section 7 consultations with Federal agencies. A 4(d) rule may be amended to add new limits on the take prohibitions, or to amend or delete limits as circumstances warrant.

General

Comment 288: A broad array of interests asserted that their activities were, at most, only minimally harmful to salmonids and that natural environmental fluctuations and activities being conducted by others were responsible for the recent drastic declines in salmonid numbers throughout the Northwest and California. Among the activities and causes listed as most harmful were logging, grazing and other agricultural practices, pesticide use, various habitat-altering actions, urban development, sport fishing, commercial fishing, drift net fishing, tribal fishing, recreational fishing, ocean and estuarine conditions, hydropower development, marine mammals, avian predators, other predators, and so forth.

Response: Comments of this nature have been made in response to essentially every listing and critical habitat proposal NMFS has put forth over the last decade. As a result there is a great deal of information on these factors available in any one of a number of **Federal Register** documents and it need not be repeated in detail here. Nonetheless, it should be pointed out that the very number of commenters and the range of the causes cited are themselves indicative of the breadth and depth of the problems facing Pacific salmonids. Therefore, NMFS acknowledges that all of these factors have played a role in the species' recent declines; as evidence, most of the factors that commenters identified were

specifically cited as risk agents in the West Coast Chinook Salmon Status Review (Myers *et al.*, 1998).

The two primary themes that repeatedly arise in these comments revolve around whether the massive declines in salmonid abundance are brought on by natural conditions or human alteration of the environment. NMFS recognizes that natural environmental fluctuations and increasing numbers of natural predators have recently had negative impacts on the species. However, NMFS believes human-induced impacts (e.g., harvest and widespread habitat modification) have played at least an equally significant role in the salmonid declines up and down the West Coast. And because the very nature of this rule-making—the codification of take prohibitions and the limits placed on them—cannot apply to natural processes (by definition, the ocean cannot not ''take'' species), the rules necessarily address human activities.

Comment 289: Many commenters stated that the language of the rules needed to be more clear in a number of respects, particularly with regard to the terms found in the take guidance sections. Others felt there was too much detail in the rules and that NMFS should simply stick to principles and not offer too much in the way of specific guidance.

Response: In publishing the proposed rules, NMFS tried to strike a balance between these opposing views. The point was to avoid making the rules overly prescriptive—and thus allow local initiative to play a strong role—yet still give valuable guidance on how to proceed with numerous human activities in the areas inhabited by threatened salmonids. To continue in this spirit, NMFS has gone to some lengths to clarify the guidance language and it may be found in this final rule.

Comment 290: Several commenters requested clarification on NMFS' use of the term ''stock,'' the definition of population segments, and the implications of these concepts for species conservation.

Response: The use of the term ''stock,'' following Ricker's definition, is critical because it defines the appropriate management units for conserving the species. According to Ricker, stocks are made up of numerous populations which become uniquely adapted to specific environmental conditions, leading to local variations in morphology, behavior, and life history traits. As amended in 1978, the ESA allows the listing of ''distinct population segments'' where groups of populations are assembled for conservation management purposes. NMFS' policy states that a salmon population is considered ''distinct'' for purposes of the ESA if it represents an ESU of the biological species, where an ESU represents an important component of the evolutionary legacy of the species. Thus the health of an ESU depends upon the health of its component parts. This argues for developing protective regulations across an ESU's entire range, even though some local populations may be thriving. The ESA 4(d) protective approach offers the flexibility to develop local protection programs which are cognizant of the species condition in the area.

Comment 291: A large number of commenters voiced general and specific support for and opposition to various rules.

Response: The proposed ESA 4(d) rules generated an amount of substantive public comment unprecedented since NMFS first began rule-making activities for salmonids on the West Coast 10 years ago. Many thousands of individual comments contained within the letters from well over one thousand respondents reflected the broadest possible spectrum of feeling—from full support to total opposition to the proposed rules. Though the very nature of the questions surrounding salmonid management in the Northwest and California precludes any possibility of pleasing everyone, NMFS has striven to use this public comment period—as well as every other input avenue at our disposal—to adapt the rules in a manner that more fully reflects the basic objectives to encourage state and local conservation efforts and to clear up the substantial confusions associated with certain elements of the earlier proposed rule.

Comment 292: Several commenters stated that NMFS should consult with tribal governments regarding actions by non-tribal entities, particularly those actions and limits contained in the salmon and steelhead ESA 4(d) rules.

Response: Throughout the development of the tribal and salmon/steelhead 4(d) rules NMFS has made a concerted effort to notify and confer with tribal representatives and technical staff throughout the Pacific Northwest and California. Contact regarding these rules goes back to before December of 1998, when draft rules were submitted for review by the affected tribes well in advance of the proposed rules. During that review, NMFS coordinated and attended a number of meetings and working sessions with tribal governments and representatives (including staff from inter-tribal fisheries commissions) to discuss particular aspects of the ESA 4(d) rules. These meetings allowed NMFS to develop proposed ESA 4(d) rules that the agency believes address a wide range of issues highlighted by the tribes. Similar efforts were made to discuss the proposed 4(d) rules with key staff and tribal council members after the rules were published.

Clearly, NMFS recognizes the need to work closely with the tribes of the region to develop and improve upon information exchange and consultation opportunities relating to salmon and steelhead conservation. Since beginning work on these 4(d) rules NMFS has added a tribal liaison position to its staff to focus on improving communications with the tribes and developing consultation procedures that will meet both NMFS and tribal needs. It is the agency's intent to continue working with tribal governments to develop regularly scheduled meetings between NMFS and tribal technical staff and policy makers to both provide more timely notice regarding NMFS activities and discuss how consultation might occur for future fisheries issues and ESA rulemaking. There remains the opportunity for the tribes and the agency to hold future discussions on applying the ESA 4(d) rules. Such future discussions can include identifying cultural and economic issues requiring the agency's attention and ideas about how such analyses should be conducted. In response to tribal requests, NMFS will correspond with each commenting tribal government, clarify how its comments were addressed, and identify the need for additional meetings to discuss potential rule amendments and modifications.

Comment 293: Many people stated that any activities conducted in accordance with the Oregon Plan for Salmon and Watersheds should receive a specific limitation on the take prohibitions.

Response: NMFS has carefully reviewed the various versions of the Oregon Plan since its genesis over 4 years ago and remains a strong supporter of it as a hugely ambitious and comprehensive effort. While many portions of the Plan may sufficiently protect the salmon resource as they now stand, other components need further work and refinements, as is widely understood and altogether understandable. Therefore, because certain parts of the Plan do not offer the salmon enough protection, NMFS cannot adopt it wholesale as a limitation on the take prohibitions.

Comment 294: Several commenters requested that NMFS clarify how it will

add new limits and adjust programs that are already within a limit.

Response: NMFS will continue to work with local jurisdictions and other entities to develop and adopt new ESA 4(d) rule limits. In general, local entities will develop a proposed limit based on the guidance set forth in the rule and will bring it to NMFS for technical assistance and to undergo a negotiation and approval process. The approach is a flexible one and there are different time frames and administrative procedures for each limit—depending on the type being proposed (see the regulatory text of this final rule). Existing limits will be reviewed and evaluated according to the schedule established at the time the limit is finalized.

Comment 295: One commenter requested that NMFS identify in the final rules the ''replicable'' elements of any of the agency-specific programs.

Response: There are two types of limits available through the ESA 4(d) rule: (1) Stand alone programs, and (2) a set of criteria that will form the basis for future programs that NMFS will evaluate for further limits on the take prohibition. The first category of limits is made up of programs that can be adopted or adapted as ''replicable'' elements for other jurisdictions or entities. The criteria in the latter type of limit also serve as replicable elements that other programs can adapt to meet.

Comment 296: A number of respondents expressed a general concern that the ESA 4(d) rules were too coercive. They stated that the rules would engender third-party lawsuits or simply fragment and undermine local efforts rather than bolster them. A recurring theme was that NMFS should be more flexible in its approach than the rules would seem to indicate.

Response: One of the primary reasons NMFS has taken this ground-breaking approach in publishing ESA 4(d) rules is to allow for a maximum of local input and Federal flexibility. Rather than simply impose blanket take prohibitions of the sort normally promulgated under a final rule listing a species, NMFS has attempted to create a regulatory environment within which local initiatives and programs have sufficient leeway to remain focused on their own goals while simultaneously working toward the ultimate end of preserving salmonid stocks—both now and in the future. No agency can alter the simple fact that certain activities that harm listed salmonids must be regulated. Nonetheless, as the rules themselves demonstrate, NMFS is committed to an approach that focuses more on aiding local efforts that conserve listed salmon and steelhead.

Comment 297: Some commenters stated that local entities should have little or no authority to carry out the measures because local initiatives have a very poor track record with respect to protecting salmonids.

Response: The task of protecting salmonids in the Pacific Northwest and California is perhaps the most complicated and far-reaching attempt to restore a species ever undertaken. In practical terms, the Federal government alone, using only Federal authorities and dollars, cannot hope to accomplish this ambitious task of salmon recovery without the additional active efforts of state and local authorities and the private sector. A wide mosaic of activities affect salmon habitat. Those activities fall under the responsibility of a range of Federal, state and local authorities. The practical ability to make changes in those activities will depend in part upon the willingness and ability of those separate authorities to encourage change. Therefore, NMFS is attempting, to the greatest extent practicable, to build opportunities for state and local initiatives in the implementation of the ESA program. This strategy has already proven successful in a few areas where watershed councils and other local bodies have made great strides in salmon conservation through habitat rehabilitation, community awareness seminars, and other projects. NMFS anticipates and welcomes further expansions of these efforts over time.

Comment 298: Many commenters stated that individual landowners should receive assurances in the rules that if they cooperated and followed the measures outlined, they would be free from any further restrictions under the ESA.

Response: As a matter of law, listed species may not be taken without legal authorization. Therefore, it is incumbent upon every individual and organization to be vigilant in terms of minimizing the impacts their activities have on listed salmonids. The 4(d) rules establish take prohibitions; that is their purpose. Secondarily they are an attempt to allow landowners and every other interested party a path by which they can have some assurance that their activities are in concert with the letter and intent of the ESA. It should be noted that no one will be forced to seek a 4(d) limitation, and no one need necessarily follow the limitations laid out in the rule. They are optional, flexible methods for ensuring that individual entities adhere to the mandated take prohibitions. The other routes for complying with the ESA are still open; for example, landowners may still seek ESA section 10 incidental take permits through the process of developing habitat conservation plans—a process that offers them a good deal of assurance that their activities will continue to be in compliance with the ESA. Any program or activity that adheres to the criteria found in the limits described in these rules will receive a similar sort of assurance. Further, it is very likely that other programs will come forth in the future that similarly protect the salmon and, as a consequence, will receive their own limitations on the take prohibitions. Nonetheless, it must be stressed that the primary purpose of these rules is to fulfill the mandate of the ESA in issuing regulations deemed necessary and advisable to provide for the conservation of threatened species.

Comment 299: A number of commenters asserted that the original listings were in error—most the reasons given fell into two categories: either (a) the science was inaccurate, or (b) the concept of listing ESUs is faulty.

Response: Section 4(b)(1)(A) of the ESA requires that NMFS make its listing determinations solely on the basis of the best available scientific and commercial data after reviewing the status of the species and taking into account any efforts being made to protect such species. NMFS believes that information contained in the agency's status review (Myers *et al.*, 1998), together with information cited in the final rule (NMFS, 1998a), represent the best scientific information presently available for the ESUs addressed in this final rule. NMFS made every effort to conduct an exhaustive review of all available information and solicited information and opinion from all interested parties in making the listing decisions. If in the future new data become available to change these conclusions, NMFS will act accordingly.

As to the validity of listing ESUs in the first place, general issues relating to ESUs and the ESA have been discussed extensively in past **Federal Register** documents—most recently in the final rule listing 4 ESUs of chinook salmon (64 FR 14308, September 9, 1999) and they need not be reiterated at length here. Nonetheless, the utility of the ESU concept is laid out in a 1991 document in which NMFS describes how it will apply the ESA definition of ''species'' to Pacific salmon (56 FR 58612, November 20, 1991). Guidance on applying this policy is contained in a NOAA Technical Memorandum entitled ''Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon'' (Waples, 1991) and in

a recent scientific paper by Waples (1995). It should also be pointed out that the National Research Council generally endorses the concept (NRC, 1995).

Comment 300: Several commenters were concerned about the scientific standards used to justify the inclusion of the 13 limits and to judge future limits, and suggested the generation of uniform standards.

Response: NMFS evaluated the current limits based on best available science and the concepts of VSP and PFC, and will evaluate any future limit using the same and other, more site specific guidelines. Recognizing the variable nature of the geologic, hydrologic and aquatic ecosystems across all ESUs, and the consequent variability in strategies for salmon recovery, NMFS proposes an approach that allows local innovation through the development of local and regional programs that are protective of salmon and steelhead. These programs are monitored and evaluated for their effectiveness in meeting the conservation goal of the survival and recovery of the species. While NMFS offers general guidelines, the 13 limitations and new programs offer additional specificity and strategies for meeting the conservation goal.

Comment 301: Some commenters expressed the opinion that the rules are too costly and will involve too much red tape.

Response: Saving a species is neither an easy task nor a cheap one. Nonetheless, NMFS is committed to finding the most efficient and cost-effective way of preserving salmon and steelhead on the West Coast. To assist us in this, we have prepared initial regulatory flexibility analyses of the effects the rules are likely to have on small businesses, non-profit organizations, local governments, and other small entities. The purpose of these analyses is to help the agency consider all reasonable regulatory alternatives that would minimize the rules' economic impacts on affected small entities. It is thus our intent to make full use of these analyses and keep economic impacts to a minimum.

In addition, because this is a new approach to promulgating 4(d) rules under the ESA, we are aware that the process may impose some unforseen burdens in terms of time investment and paperwork for all involved parties—including NMFS. To counter this, we will use the principles of adaptive management to streamline the process wherever and whenever possible.

Comment 302: A number of people stated that more time was needed for completing and commenting on the rules.

Response: NMFS has been working with individual programs, tribes, and local governments all over the Northwest for well over 2 years to complete the 4(d) rule proposals. Twenty-five public meetings were held in order to get input. The statutory time line for commenting on the rules was doubled so that every interested person in the region would have a reasonable amount of time in which to formulate and submit their comments.

It is important to note, however, that one of the main premises of promulgating these rules is to build a maximally adaptive process for managing salmon on the West Coast. Therefore, it is expected that these rules will continue to change in response to incoming monitoring data, further public input, other proposed limitations on the take prohibitions, and the developing recovery plans for the listed species.

Comment 303: One commenter requested that the reference to a public comment period of 30 days for various plans and programs be included in every section of the rule in order to provide consistency in process between limits.

Response: All programs that are accepted as ESA 4(d) limits will be published in the **Federal Register** and the usual comment period is 30 days. NMFS makes clear in the regulatory text of this final rule where and when the 30-day comment period applies.

Comment 304: Many commenters agreed with various portions of the rules, but stated that it is imperative that they be enforced and that monitoring and oversight need to be accounted for in every limit. Further, monitoring must be built into the system in a way that allows the limits to be altered when evolving science shows it necessary.

Response: Change in response to new data is the very heart of the adaptive management process. NMFS is committed to continually bringing the best and latest information to bear on the question of how to best preserve declining salmon stocks—monitoring is a critical path for developing that information. Most of the programs given limitations in the 4(d) rules feature monitoring as an integral part. The language in the final rules has been changed slightly to further stress the importance of monitoring and to make clear that it will be used to alter the programs where necessary.

Comment 305: Some commenters suggested that the results from monitoring data for programs implemented under different limits should be available for public comment. Another commenter urged that the process for reviewing the effectiveness of the fish protection measures include tribal managers, independent scientists, and the public.

Response: The results of monitoring data from programs within ESA 4(d) limits will be available for public review at the appropriate NMFS office. At this time, however, NMFS does not have a mechanism to seek formal public comment on the data. NMFS will continue to seek monitoring data, input, and other relevant information from co-managers and others as the programs are reviewed, evaluated, and adjusted.

Comment 306: Some commenters wanted to know why NMFS believes it is necessary to have such a detailed review and reporting process for the limits when FWS does not require anything like it for wildlife.

Response: As stated previously, this is a ground-breaking approach to managing threatened species. Its intent is to allow a maximum of local input while simultaneously offering the largest possible degree of protection for the species. It has never been tried before and, as a result, it is imperative that we keep a very close eye on its progress. Aside from the need for monitoring to allow the process to adapt, these rules will eventually become part of the larger recovery planning process. By closely examining the success of the proposed measures, we can get a much better idea of what it will take to fulfill the ultimate portion of our mandate: to recover the species.

Comment 307: One commenter recommended that NMFS work with FWS to make sure that Federal activities receive take prohibition limits under our ESA 4(d) rules similar to the ones being proposed for Bull trout. In addition, another commenter urged close coordination with FWS to prevent different interpretations of take and different limits being offered.

Response: NMFS always seeks to cooperate with FWS, and procedures have been established for joint consultation on ESA rulemaking and for reviewing Federal programs through section 7 of the ESA. NMFS anticipates that this cooperation will be strengthened as the 4(d) rule is implemented. NMFS will further work with FWS to ensure that the existing bull trout take prohibitions might be modified to reflect appropriate state or local efforts in parallel to this final rule.

Comment 308: Some tribal commenters were concerned that the 4(d) rules could serve as a ''back door'' to unfairly allocate the conservation burden on tribal governments. The

concern is that if the program is not scientifically rigorous enough, the Agency would be forced to turn to the tribes for additional conservation burden (i.e., limit fishing or development activities).

Response: NMFS intends to review all new proposed limitations rigorously for their contribution to the conservation of the species using existing criteria and additional site-specific tools. In addition, before any program is accepted, it will be published in the **Federal Register** for public review and comment. NMFS expects this process to be rigorous and open enough to permit the development of effective protective regulations and programs.

Comment 309: Some commenters stated that NMFS should delineate specific population parameters for several named populations (e.g., the Yuba River) so it can be determined if they may be excepted from having any take prohibitions placed on them. Some commenters wanted the rules to be eased when a viable population size is reached in order to give landowners an incentive to continue using protective measures.

Response: The limits on take prohibitions are given for specific activities, not for populations. If an activity helps conserve salmonids or if it adequately limits impacts on salmonids, it may receive a limitation on the take prohibitions. In the spirit of adaptive management, there may well come a point in the future where a population (and its ESU) has rebounded to the point where it is healthy enough, viable enough, that alternative management actions would be allowable. Of necessity, this would first take place in a highly controlled experimental environment that would allow researchers to determine the impacts of any new management scheme. Until that time, however, it is necessary to protect the salmonids while we get a better measure of population viability and place it firmly in the context of managing West Coast salmon. NMFS scientists are working diligently to accomplish that goal and will continue to use their results to adapt the agency's ongoing salmon management programs.

Comment 310: Some commenters stated that the overall regulatory scheme was too fragmented. They stated the need for a clear pathway for local and state governments to synthesize their programs with the ESA 4(d) approach. They also stated there should be a better recognition of the limitations local governments face in terms of staffing, funding, and ability to monitor.

Response: One of this final rule's purposes is to develop a process that is flexible, adaptable, and receptive to greater participation from local entities. In order to accomplish this, the regulatory scheme must remain somewhat open as well. Nonetheless, though NMFS desires to remain open to new approaches, we have also included a good deal of guidance as to what we believe any program should contain in terms of protective measures for salmon. Also, we will continue to do what we can to assist local entities, watershed councils, and others with instruction, technical assistance, and, whenever possible, funding.

Comment 311: Some commenters asserted that NMFS cannot anticipate how many states or local governments will be affected by the rule or how many entities or jurisdictions will apply for coverage under the new ESA 4(d) limits. Others commented that NMFS will be inundated and overwhelmed with requests for programs to come under a 4(d) limit and suggested simplified procedures streamlining the review and approval of future potential take limitations.

Response: NMFS is anticipating strong interest from state and local governments in the ESA 4(d) limits. We are encouraging jurisdictions to work together in developing plans that cover wide geographic scales and multiple activities—thus reducing the number of individual programs that need to be reviewed. Also, we anticipated that promulgating these rules would increase workloads and, as a result, we are evaluating our resource needs and are fully committed to meeting future program demands.

Comment 312: Several commenters suggested that NMFS provides no scientific basis to categorically apply the take prohibition to an entire category of activities such as agriculture, and that the agency provides no technical guidance on take avoidance.

Response: The take prohibitions do not apply to categories of activities, but to any activities that take listed species. The section on ''Take Guidance'' provides further information on those activities that have a high risk of take. NMFS stands ready to work with interested parties to provide further guidance, including guidance that could ultimately be included as a 4(d) limitation.

Comment 313: Several commenters were confused by multiple **Federal Register** documents and didn't realize that there were several separate ESA 4(d) rules.

Response: For the final rules, we have combined the chinook and the steelhead rules to help reduce some of the confusion. We hope this, along with several changes in the rule' language will make things a bit more clear.

Changes to the Proposed ESA 4(d) Rules

The proposed rules included a lengthy preamble where NMFS provided technical guidance, description of the scientific principles upon which the limits on the take prohibition were based, and a description of the background and content of the 13 limits. The proposed regulatory language was included in sections 223.203 and 223.208. Modifications to the proposed preamble sections based on written comments will be reflected in ''A Citizen's Guide to the 4(d) Rule'' (NMFS, 2000), while the actual changes to the regulatory language are described as follows.

An important change to highlight is that the final 4(d) rules for the different ESUs have different effective dates. In the final steelhead and salmon 4(d) rule the effective date for the steelhead ESUs (§ 223.102(a)(5) through (a)(9) and (a)(14) and (a)(15)) is September 8, 2000. The effective date for the salmon ESUs (§ 223.102(a)(10), (a)(12), (a)(13) and (a)(16) through (a)(19)) is January 8, 2001. NMFS recognizes that the final 4(d) rules are complex and that even the proposed rules created a certain amount of confusion among those who commented on them. The court-ordered settlement date requires NMFS to adopt protective regulations for the steelhead ESUs by June 19, 2000. NMFS, however, is not under a similar court-mandated time line for the salmon ESUs. Therefore, because of the rule's length and complexity, the diverse range of human activities that will potentially be affected, and the continued need to educate all sectors of the public, the effective date for the salmon ESUs will be six months after publication of this **Federal Register** document. This 6-month period will allow NMFS to educate and work with all jurisdictions, entities, and individuals affected by the rule. It will also provide additional time for them to review their activities and programs and adjust them (if needed) to avoid taking threatened species.

The general format of the proposed regulations included the prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538) relating to endangered species being applied to the 14 listed threatened salmonid ESUs, except as provided in the 13 limits on application of the section 9(a)(1)(B) and 9(a)(1)(C) take prohibitions that are included in the regulation. The proposed rules listed the following 13 limit categories: (1) Activities conducted in accord with

ESA incidental take authorization; (2) ongoing scientific research activities, for a period of 6 months from the publication of the final rule; (3) emergency actions related to injured, stranded, or dead salmonids; (4) fishery management activities; (5) hatchery and genetic management programs; (6) activities in compliance with joint tribal/state plans developed within *U.S.* v. *Washington* or *U.S.* v. *Oregon*; (7) scientific research activities permitted or conducted by the states; (8) state, local, and private habitat restoration activities; (9) properly screened water diversion devices; (10) routine road maintenance activities in Oregon; (11) certain park maintenance activities in the City of Portland, Oregon; (12) certain municipal, residential, commercial and industrial (MRCI) development and redevelopment activities; and (13) forest management activities within the state of Washington.

NMFS is modifying the final ESA 4(d) protective regulations for these 14 ESUs based on comments and new information received on the proposed rules. The following section summarizes how the regulatory language for each limit and technical issues did or did not change. The actual regulatory descriptions of each limit and technical information can be found in the regulatory text at the end of this **Federal Register** document.

Viable Salmonid Populations Paper

The proposed rules solicited public comments on the draft NMFS VSP paper. The VSP paper is not a separate limit, but provides a technical framework for the fishery management and hatchery management limits. Based on public comments regarding the draft VSP paper, changes were made in the regulatory language for the fishery and hatchery management limits to clarify how the VSP data requirements will be addressed. Additional compliance guidance is available in''A Citizen's Guide to the 4(d) Rule'' (NMFS, 2000).

Properly Functioning Conditions

For the reasons identified in the Comment and Responses section, language was added to the limits addressing habitat issues, i.e., habitat restoration, pest management and routine road maintenance, in order to define properly functioning condition and how NMFS will evaluate the limits with regard to meeting this biological standard.

Legal and Affirmative Defense

For the reasons identified in the Comment and Responses section, regulation language was modified to: (1) add new language to make explicit that it would be the defendant's obligation to plead and prove application of and compliance with a limit as an affirmative defense; (2) clarify the question about whether the rule should be non-severable, by making it explicit that NMFS intends the provisions of this rule to be severable.

Limit for Activities Conducted in Accord with ESA Incidental Take Authorization

No changes were made to the regulations pertaining to this limit. Additional compliance guidance is available from NMFS in ''A Citizen's Guide to the 4(d) Rule'' (NMFS, 2000).

Limit for Ongoing Scientific Research Activities

No changes were made to the regulations pertaining to this limit. Additional compliance guidance is available from NMFS in ''A Citizen's Guide to the 4(d) Rule'' (NMFS, 2000).

Limit for Rescue and Salvage Actions

No changes were made to the regulations pertaining to this limit. Additional compliance guidance is available from NMFS in ''A Citizen's Guide to the 4(d) Rule'' (NMFS, 2000).

Limit for Fishery Management Activities

For the reasons identified in the comment and response section, this limit was modified to: (1) change the use of a MOA between states and NMFS to a letter of concurrence from NMFS; (2) clarify the use of viable and critical salmonid population thresholds consistent with the VSP paper; (3) clarify the timing of reports describing take of listed salmonids; and (4) explain that the prohibitions on take of threatened steelhead in recreational fisheries managed solely by the states of Oregon, Washington, Idaho and California will go into effect January 8, 2001.

Limit for HGMPs

For the reasons identified in the comment and response section, this limit was modified to change the use of a MOA between states and NMFS to a letter of concurrence from NMFS.

Limit for Joint Tribal and State Plans

No changes were made to the regulations pertaining to this limit. Additional compliance guidance is available from NMFS in ''A Citizen's Guide to the 4(d) Rule'' (NMFS, 2000).

Limit for Scientific Research Activities Permitted or Conducted by the States

NMFS has revised the limit to reflect commenter concerns about the feasibility of adequate oversight by state fishery agencies. Additional compliance guidance is available from NMFS in ''A Citizen's Guide to the 4(d) Rule'' (NMFS, 2000).

Limit for Habitat Restoration

For the reasons identified in the Comment and Responses section, this limit was modified to: (1) clarify that take prohibitions do not apply to habitat restoration activities provided the activity is part of a WCP that meets criteria listed in the regulation; (2) change the time frame to complete a watershed conservation plan from 2 years to an undetermined time, so that the limit is available whenever the criteria described in the regulation are met; (3) delete the list of six categories of habitat restoration activities that would not have the ESA section 9 take prohibitions applied to them for 2 years; (4) clarify and revise the criteria NMFS will use to evaluate a state's watershed conservation plan guidelines; and (5) clarify that NMFS will not approve individual WCPs; instead, NMFS will approve the WCP guidelines with each state and periodically review the state watershed planning programs for consistency with the guidelines. Additional compliance guidance is available from NMFS in ''A Citizen's Guide to the 4(d) Rule'' (NMFS, 2000).

Limit for Water Diversion Screening

For the reasons identified in the comment and response section, this limit was modified to: (1) allow NMFS-authorized state agency engineers (''authorized officers'') to review and recommend certification of screen designs to NMFS rather than NMFS' engineers solely having this responsibility; and (2) allow NMFS, on a case by case basis, to grant this limit to water diversion projects where NMFS has approved a design construction plan and schedule, including interim operation measures to reduce the likelihood of take. NMFS may also require a commitment of compensatory mitigation if implementation of a plan and schedule is terminated prior to completion.

Limit for Routine Road Maintenance Activities

For the reasons identified in the comment and response section, this limit was modified to: (1) allow this limit to be available to any state, county, city, or port once they have demonstrated in writing that their routine road maintenance activities are equivalent to those in the ODOT Guide which adequately protect threatened salmonid species; or by employees or

agents of a state, county, city or port that complies with a routine road maintenance program that meets proper functioning habitat conditions; (2) add language referring to state, city, county, and ports; (3) change the time frame for ODOT or another jurisdiction to respond to new information in the shortest amount of time feasible, but not longer than one year; (4) clarify that prior to approving any state, city, county, or port program as within this limit, or approving any substantive change in a program within this limit, NMFS will publish notification in the **Federal Register**; (5) clarify that any jurisdiction should first commit in writing to apply the management practices in the ODOT Guide, rather than the proposed language, which first required the jurisdiction to enter into a memorandum of agreement with NMFS; and (6) add new language regarding properly functioning condition. Additional compliance guidance is available from NMFS in ''A Citizen's Guide to the 4(d) Rule'' (NMFS, 2000).

Limit for Certain Integrated Pesticide Management Activities

For the reasons identified in the Comment and Responses section, this limit was modified to: (1) add new language regarding properly functioning conditions; and (2) clarify language regarding how NMFS will address future program changes and provide public notice that the limit is withdrawn. Additional compliance guidance is available from NMFS in ''A Citizen's Guide to the 4(d) Rule'' (NMFS, 2000).

Limit for Municipal, Residential, Commercial and Industrial (MRCI) Development and Redevelopment Activities

For the reasons identified in the Comment and Responses section, this limit was modified to: (1) clarify that this limit applies to MRCI development and redevelopment undertaken by cities, counties, and regional governmental entities; (2) expand and clarify the content of the 12 evaluation considerations NMFS will use to review MRCI development ordinances and plans; (3) add new language to emphasize the properly functioning habitat conditions NMFS considers adequate to conserve listed salmonids; (4) clarify that NMFS notes that not all 12 considerations described in the regulation will necessarily be relevant to all ordinances and plans submitted for review and approval; and (5) include language which clarifies the process NMFS will use to provide notice of availability of ordinances and plans for public review, and NMFS' process to amend or withdraw limits.

Limit for Forest Management Activities in the State of Washington

For the reasons identified in the Comment and Responses section, this limit was modified to add new language stating that actions taken under alternative plans are included in this limit provided that they meet the requirements stated in the regulation and are submitted and approved by the authorized Washington state agency.

Take Guidance

These threatened species are in danger of becoming extinct in the foreseeable future. They have been depleted by over-fishing, past and ongoing freshwater and estuarine habitat destruction, hydropower development, hatchery practices, and other causes. It is, therefore, necessary and advisable to put into place ESA section 9(a)(1) prohibitions to aid in their conservation. Section 9(a)(1) prohibitions make it illegal for any person subject to the United States' jurisdiction to ''take'' these species without written authorization (''take'' is defined to occur when a person engages in activities that harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a species or attempt to do any of these). Impacts on a protected species' habitat may harm members of that species and, therefore, constitute a ''take'' under the ESA. Such an act may include significant habitat modification or degradation that actually kills or injures listed fish by significantly impairing essential behavioral patterns including breeding, spawning, rearing, migrating, feeding, or sheltering.

On July 1, 1994 (59 FR 34272), NMFS and FWS published a policy committing both agencies to identify, to the extent possible, those activities that would or would not violate section 9 of the ESA. The intent of this policy is to increase public awareness about ESA compliance and focus public attention on those actions needed to protect species.

Based on available information, NMFS believes the categories of activities listed here are those activities which as a general rule may be most likely to result in injury or harm to listed salmonids. NMFS wishes to emphasize at the outset that whether injury or harm is resulting from a particular activity is entirely dependent upon the facts and circumstances of each case. The mere fact that an activity may fall within one of these categories does not at all mean that that specific activity is causing harm or injury. These types of activities are, however, those that may be most likely to cause harm and thus violate this rule. NMFS' ESA enforcement will therefore focus on these categories of activities.

Activities listed in A thru J below are as cited in NMFS' harm rule 64 FR 215 (November 8, 1999).

A. Constructing or maintaining barriers that eliminate or impede a listed species' access to habitat or ability to migrate.

B. Discharging pollutants, such as oil, toxic chemicals, radioactivity, carcinogens, mutagens, teratogens or organic nutrient-laden water including sewage water into a listed species' habitat.

C. Removing, poisoning, or contaminating plants, fish, wildlife, or other biota required by the listed species for feeding, sheltering, or other essential behavioral patterns.

D. Removing or altering rocks, soil, gravel, vegetation or other physical structures that are essential to the integrity and function of a listed species' habitat.

E. Removing water or otherwise altering streamflow when it significantly impairs spawning, migration, feeding or other essential behavioral patterns.

F. Releasing non-indigenous or artificially propagated species into a listed species' habitat or where they may access the habitat of listed species.

G. Constructing or operating dams or water diversion structures with inadequate fish screens or fish passage facilities in a listed species' habitat.

H. Constructing, maintaining, or using inadequate bridges, roads, or trails on stream banks or unstable hill slopes adjacent to or above a listed species' habitat.

I. Conducting timber harvest, grazing, mining, earth-moving, or other operations which result in substantially increased sediment input into streams.

J. Conducting land-use activities in riparian areas and areas susceptible to mass wasting and surface erosion, which may disturb soil and increase sediment delivered to streams, such as logging, grazing, farming, and road construction.

K. Illegal fishing. Harvest in violation of fishing regulations will be a top enforcement concern.

L. Various streambed disturbances may trample eggs or trap adult fish preparing to spawn. The disturbance could be mechanical disruption caused by constructing push-up dams, removing gravel, mining, or other work in a stream channel. It may also take the form of egg trampling or smothering by livestock in the streambed or by vehicles or equipment being driven

across or down the streambed (as well as any similar physical disruptions).

M. Interstate and foreign commerce dealing in listed salmonids and importing or exporting listed salmonids may harm the fish unless it can be shown—through an ESA permit—that they were harvested in a manner that complies with ESA requirements.

N. Altering lands or waters in a manner that promotes unusual concentrations of predators.

O. Shoreline and riparian disturbances (whether in the riverine, estuarine, marine, or floodplain environment) may retard or prevent the development of certain habitat characteristics upon which the fish depend (e.g., removing riparian trees reduces vital shade and cover, floodplain gravel mining, development, and armoring shorelines reduces the input of critical spawning substrates, and bulkhead construction can eliminate shallow water rearing areas).

P. Filling or isolating side channels, ponds, and intermittent waters (e.g., installing tide gates and impassable culverts) can destroy habitats that the fish depend upon for refuge areas during high flows.

The list provides examples of the types of activities that could have a high risk of resulting in take but it is by no means exhaustive. It is intended to help people avoid violating the ESA and to encourage efforts to save the species. Determination of whether take has actually occurred depends on the circumstances of a particular case.

Many activities that may kill or injure salmonids are regulated by state and/or Federal processes, such as fill and removal authorities, NPDES or other water quality permitting, pesticide use, and the like. For those types of activities, NMFS would not intend to concentrate enforcement efforts on those who operate in conformity with current permits. Rather, if the regulatory program does not provide adequate salmonid protection, NMFS intends to work with the responsible agency to make necessary changes in the program.

For instance, concentrations of pesticides may affect salmonid behavior and reproductive success. Current EPA label requirements were developed in the absence of information about some of these subtle but real impacts on aquatic species such as salmonids. Where new information indicates that label requirements are not adequately protective of salmonids, NMFS will work with EPA through the section 7 consultation process to develop more protective use restrictions, and thereby provide the best possible guidance to all users. Similarly, where water quality standards or state authorizations lead to pollution loads that may cause take, NMFS intends to work with the state water quality agencies and EPA to bring those standards or permitting programs to a point that does protect salmonids.

Persons or entities who conclude that their activity is likely to injure or kill protected fish are encouraged to immediately adjust that activity to avoid take (or adequately limit any impacts on the species) and seek NMFS' authorization for incidental take under (a) an ESA section 10 incidental take permit; (b) an ESA section 7 consultation; or (c) a limit on the take prohibitions provided in this rule. The public is encouraged to contact NMFS (see **FOR FURTHER INFORMATION CONTACT**) for assistance in determining whether circumstances at a particular location (involving these activities or any others) constitute a violation of this rule.

State and local efforts like the Oregon Plan for Salmon and Watersheds, the State of Washington's Extinction is Not an Option Plan, Metro's Functional Plan, the Puget Sound Tri-County Initiative and Lower Columbia Fish Recovery Board in Washington state, the Eugene, Oregon-area Metro ESA Coordinating Team, and the Willamette Restoration Initiative (WRI) have stepped forward and assumed leadership roles in saving these species. NMFS reiterates its support for these efforts and encourages them to resolve critical uncertainties and further develop their programs so they can take the place of blanket ESA take prohibitions.

Impacts on listed salmonids resulting from actions in compliance with a permit issued by NMFS pursuant to section 10 of the ESA are not violations of this rule. Section 10 permits may be issued for research activities, enhancement of a species' survival, or to authorize incidental take occurring in the course of an otherwise lawful activity. NMFS consults on a broad range of activities conducted, funded, or authorized by Federal agencies. These include fisheries harvest, hatchery operations, silviculture activities, grazing, mining, road construction, dam construction and operation, discharge of fill material, and stream channelization and diversion. Federally-funded or approved activities that affect listed salmonids and for which ESA section 7 consultations have been completed and any take authorized, will not constitute violations of this rule—provided the activities are conducted in accord with all reasonable and prudent measures, terms, and conditions stated in the consultation and incidental take permit.

References

A list of references cited in this final rule is available upon request (see **ADDRESSES**).

Classification

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) was designed to ensure that agencies carefully assess whether aspects of a proposed regulatory scheme (record keeping, safety requirements, etc.) can be tailored to be less burdensome for small businesses while still achieving the agency's statutory responsibilities. NMFS prepared an initial regulatory flexibility analysis (IRFA) which was made available through the proposed rule. Several public comments were received related to the IRFA or to economic impacts generally. Those comments and NMFS responses to them are summarized in the Response to Comments section. NMFS has prepared a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA), taking into consideration the public comments received. A summary of the final FRFA follows. The FRFA is available upon request (see **ADDRESSES**), or may be accessed on NMFS web site at www.nwr.noaa.gov.

This ESA 4(d) rule has no specific requirements for regulatory compliance; it essentially sets an enforceable performance standard (do not take listed fish) that applies to all entities and individuals within the ESU unless that activity is within a carefully circumscribed set of activities on which NMFS will not impose the take prohibitions. Hence, the universe of entities reasonably expected to be directly or indirectly impacted by the prohibition is broad.

The geographic range of these regulations crosses four states and the number of entities potentially affected by imposition of take prohibitions is substantial. Activities potentially affecting salmonids are those associated with agriculture, forestry, fishing, mining, heavy construction, highway and street construction, logging, wood and paper mills, electric services, water transportation, tourism, real estate, and other industries. As many of these activities involve local, state, and Federal oversight, including permitting, governmental activities from the smallest towns or planning units to the largest cities will also be impacted. The activities of some nonprofit organizations will also be affected by these regulations.

NMFS examined in as much detail as practical the potential impact of the

regulation on a sector by sector basis. Unavailable or inadequate data leaves a high degree of uncertainty surrounding both the numbers of entities likely to be affected, and the characteristics of any impacts on particular entities. The problem is complicated by differences among entities even in the same sector as to the nature and size of their current operations, proximity to waterways, the degree to which the operation is already protective of salmonids, and individual strategies for dealing with the take prohibitions.

There are no recordkeeping or reporting requirements associated with the take prohibition and, therefore, it is not possible to simplify or tailor recordkeeping or reporting to be less burdensome for small entities. Some limits, for which NMFS has found it not necessary to prohibit take, involve recordkeeping and/or reporting to support that continuing determination. NMFS has attempted to minimize any burden associated with programs for which the take prohibitions are not enacted. The final rule does not duplicate, overlap, or conflict with any other relevant Federal rules.

In formulating this rule, NMFS considered several alternative approaches, described in more detail in the FRFA. These included:

(1) Enacting a ''global'' protective regulation for threatened species, through which section 9 take prohibitions are applied automatically to all threatened species at the time of listing; (2) ESA 4(d) protective regulations with no limits, or only a few limits, on the application of the take prohibition for relatively uncontroversial activities such as fish rescue/salvage; (3) take prohibitions in combination with detailed prescriptive requirements applicable to one or more sectors of activity; (4) ESA 4(d) protective regulations similar to the existing interim 4(d) protective regulations for Southern Oregon/Northern California coast coho, which includes four limits on the take prohibition for harvest plans, hatchery plans, scientific research, and habitat restoration projects, when in conformance with specified criteria; (5) a protective regulation similar to the interim rule, but with recognition of more programs and circumstances in which application of take prohibitions is not necessary and advisable; (6) an option earlier advocated by the State of Oregon and others, in which ESA section 9 take prohibitions would not be applied to any activity addressed by the Oregon Plan for Salmon and Watersheds, fundamentally deferring protections to the state; and (7) enacting no protective regulations for threatened steelhead. The first four alternatives would place greater burdens on small entities. Alternative 6 would not provide sufficient protections (see response to comments), while alternative 7 would leave the ESUs without any protection other than provided by ESA section 7 consultations for actions with some Federal nexus. NMFS could not support that approach as being consistent with the obligation to enact such protective regulations as are ''necessary and advisable to provide for the conservation of'' the listed steelhead. Alterative 5 is the approach taken in this rule.

As a result of comments received related to the proposed rules and IRFAs, NMFS has modified the regulations to broaden the applicability of some limits, and to make them more flexible. For instance, the road maintenance limit is now generally available. The limit for development has been broadened to cover a greater range of types of plans or ordinances, and has been modified to allow for circumstances where a jurisdiction's ordinances may not address all of the evaluation criteria, but nonetheless are adequate for a limit for those aspects addressed. These types of adjustments provide additional options for jurisdictions that may wish to seek ESA compliance assurances.

NMFS concludes that at the present time there are no legally viable alternatives to the final rule, as modified from the proposals, that would have less impact on small entities and still fulfill the agency's obligations to protect listed salmonids. The first four alternatives may result in unnecessary impacts on economic activity of small entities, given NMFS' judgment that more limited protections would suffice to conserve the species.

Executive Order 12866

Under E.O. 12866 (58 FR 51735, October 4, 1993), NMFS has prepared a Regulatory Impact Review (RIR) which considers costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits where estimates cannot be meaningfully made for impacts that are essential to consider. We cannot quantify the economic effect of this rule, given the geographic scope and the size and economic dimensions of the potentially affected economic sectors that operate within the ESUs, but have considered costs and benefits qualitatively in structuring the rule. Although only a share of the benefits from the recovery of threatened salmonids to a sustainable level would be attributable to this rule, it is clear that the potential costs associated with imposing take prohibitions to protect those salmonids are associated with substantial potential tangible and intangible returns.

The ESA limits NMFS to alternatives that lead to recovery, but in choosing among alternatives, we are obligated to consider taking the least cost path. NMFS has concluded that among the alternative regulatory approaches, the approach in this final rule (with changes made in response to public comment) will maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts; and equity) and minimize costs, within the constraints of the ESA. Because this alternative exempts activities that fall within adequate state or local programs, NMFS' involvement will be more collaborative and less often require enforcement actions. This alternative has the greatest probability that compliance burdens will be equally shared, that economic incentives will be employed in appropriate cases, and that practical standards adapted to the particular characteristics of a state or region will aid citizens in reducing the risks of take in an efficient way. For these reasons, it is likely that this alternative will minimize the financial burden on the public of avoiding take over the long term.

Executive Order 13084 Consultation and Coordination with Indian Tribal Governments

E.O. 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This rule does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this final rule.

Nonetheless, NMFS took several steps to inform tribal governments and solicit their input during development of the proposed rule, and made numerous adjustments to the proposal as a result of those contacts. A number of Indian tribal governments, as well as both the Columbia River Intertribal and Northwest Indian Fisheries

Commissions, commented formally on the proposed rules. In addition, NMFS has continued both informal exchanges with tribal representatives and meetings with tribal officials. These exchanges have resulted in some refinements of the rule, as well as greater appreciation by NMFS of the challenges ahead as it implements the rule. NMFS has proposed an ongoing, regular meeting schedule to assure continued exchange of information with the numerous tribal governments on matters of interest, including matters associated with this rule.

Executive Order 13132—Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this rule. In fact, this rule provides a route by which NMFS may defer to state and local government programs, where they provide necessary protections for threatened salmonids.

Although not required by E.O. 13132, in keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS conferred with numerous state, local and other governmental entities while preparing the proposed rules, and has had continued informal and formal contacts with all affected states. We have held workshops explaining the rule to interested local or regional entities and exploring possible implementation strategies as well as options for future limits with those attending.

In addition to these efforts, NMFS staff have given numerous presentations to interagency forums, community groups, and others, and served on a number of interagency advisory groups or task forces considering conservation measures. Many cities, counties and other local governments have sought guidance and consideration of their planning efforts from NMFS, and NMFS staff have met with them as rapidly as our resources permit. Finally, NMFS' Sustainable Fisheries Division staff have continued close coordination with state fisheries agencies toward development of artificial propagation and harvest plans and programs that will be protective of listed salmonids and ultimately may be recognized within this rule. NMFS expects to continue to work with all of these entities in implementing this rule.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648-0399. Public reporting burden per response for this collection of information is estimated to average 5 hours for a submission on diversion screenings or for a report on salmonids assisted, disposed of, or salvaged; 20 hours to prepare a road maintenance agreement; 30 hours for an urban ordinance development package; and 10 hours for an urban development annual report. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

National Environmental Policy Act

NMFS prepared an Environmental Assessment (EA), as defined under the authority of the National Environmental Policy Act (NEPA) of 1969, in connection with this regulation. Based on review and evaluation of the information contained in the EA, we determined that the proposed action to promulgate protective regulations for 14 threatened salmonid ESUs, and to create limits on the applicability of the prohibition on taking any of those salmonids would not be a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of NEPA of 1969. NMFS received a number of comments related to NEPA compliance, which are summarized together with responses elsewhere in this notice. NMFS believes the EA examined appropriate alternatives, and that preparation of an EIS is not required. Accordingly, we adhere to our prior Finding of No Significant Impact (FONSI) for this action. The EA and FONSI are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation,

Dated: June 19, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531-1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq*.

2. Section 223.203 is revised to read as follows:

§ 223.203 Anadromous fish.

(a) *Prohibitions*. The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to the threatened species of salmonids listed in § 223.102(a)(1) through (a)(10), and (a)(12) through (a)(19), except as provided in paragraph (b) of this section and § 223.209(a).

(b) *Limits on the prohibitions*. (1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter II implementing such exceptions, also apply to the threatened species of salmonids listed in § 223.102(a)(1) through (a)(10), and (a)(12) through (a)(19).

(2) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to activities specified in an application for a permit for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than October 10, 2000. The prohibitions of paragraph (a) of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of a permit, or March 7, 2001, whichever occurs earliest.

(3) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(4) through (a)(10), and (a)(12) through (a)(19) do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the Idaho Department of Fish and Game (IDFG), Washington Department of Fish

and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Game (CDFG), or of any other governmental entity that has co-management authority for the listed salmonids, when the employee or designee, acting in the course of his or her official duties, takes a threatened salmonid without a permit if such action is necessary to:

(i) Aid a sick, injured, or stranded salmonid,

(ii) Dispose of a dead salmonid, or

(iii) Salvage a dead salmonid which may be useful for scientific study.

(iv) Each agency acting under this limit on the take prohibitions of paragraph (a) of this section is to report to NMFS the numbers of fish handled and their status, on an annual basis. A designee of the listed entities is any individual the Federal or state fishery agency or other co-manager has authorized in writing to perform the listed functions.

(4) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to fishery harvest activities provided that:

(i) Fisheries are managed in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP) and implemented in accordance with a letter of concurrence from NMFS. NMFS will approve an FMEP only if it clearly defines its intended scope and area of impact and sets forth the management objectives and performance indicators for the plan. The plan must adequately address the following criteria:

(A) Define populations within affected listed ESUs, taking into account spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiably unique biological and life history traits. Populations may be aggregated for management purposes when dictated by information scarcity, if consistent with survival and recovery of the listed ESU. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units, describe how the management units are defined, given biological and life history traits, so as to maximize consideration of the important biological diversity contained within the listed ESU, respond to the scale and complexity of the ESU, and help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range.

(B) Utilize the concepts of ''viable'' and ''critical'' salmonid population thresholds, consistent with the concepts contained in the technical document entitled ''Viable Salmonid Populations (NMFS, 2000b).'' The VSP paper provides a framework for identifying the biological requirements of listed salmonids, assessing the effects of management and conservation actions, and ensuring that such actions provide for the survival and recovery of listed species. Proposed management actions must recognize the significant differences in risk associated with viable and critical population threshold states and respond accordingly to minimize the long-term risks to population persistence. Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet at viable levels, harvest management must not appreciably slow the population's achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not be allowed to appreciably increase genetic and demographic risks facing the population and must be designed to permit the population's achievement of viable function, unless the plan demonstrates that the likelihood of survival and recovery of the entire ESU in the wild would not be appreciably reduced by greater risks to that individual population.

(C) Set escapement objectives or maximum exploitation rates for each management unit or population based on its status and on a harvest program that assures that those rates or objectives are not exceeded. Maximum exploitation rates must not appreciably reduce the likelihood of survival and recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations.

(D) Display a biologically based rationale demonstrating that the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease.

(E) Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics, such as age, fecundity, size and sex data, and migration timing.

(F) Provide for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed.

(G) Provide for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(H) Include restrictions on resident and anadromous species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions.

(I) Be consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its fisheries and provides to NMFS on a regular basis, as defined in NMFS' letter of concurrence for the FMEP, a report summarizing this information, as well as the implementation and effectiveness of the FMEP. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the FMEP.

(iii) The state confers with NMFS on its fishing regulation changes affecting listed ESUs to ensure consistency with the approved FMEP. Prior to approving a new or amended FMEP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment. Such an announcement will provide for a comment period on the draft FMEP of not less than 30 days.

(iv) NMFS provides written concurrence of the FMEP which specifies the implementation and reporting requirements. NMFS' approval of a plan shall be a written approval by NMFS Southwest or Northwest Regional Administrator, as appropriate. On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit for activities associated with that FMEP. Such an announcement will

provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that the prohibitions would then apply to those fishery harvest activities. A template for developing FMEPs is available from NMFS Northwest Region's website (www.nwr.noaa.gov).

(v) The prohibitions of paragraph (a) of this section relating to threatened species of steelhead listed in § 223.102 (a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to fisheries managed solely by the states of Oregon, Washington, Idaho, and California until January 8, 2001.

(5) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to activity associated with artificial propagation programs provided that:

(i) A state or Federal Hatchery and Genetics Management Plan (HGMP) has been approved by NMFS as meeting the following criteria:

(A) The HGMP has clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals shall address whether the program is intended to meet conservation objectives, contribute to the ultimate sustainability of natural spawning populations, and/or intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program that will be used to measure the program's success or failure.

(B) The HGMP utilizes the concepts of viable and critical salmonid population threshold, consistent with the concepts contained in the technical document entitled ''Viable Salmonid Populations'' (NMFS, 2000b). Listed salmonids may be purposefully taken for broodstock purposes only if the donor population is currently at or above the viable threshold and the collection will not impair its function; if the donor population is not currently viable but the sole objective of the current collection program is to enhance the propagation or survival of the listed ESU; or if the donor population is shown with a high degree of confidence to be above critical threshold although not yet functioning at viable levels, and the collection will not appreciably slow the attainment of viable status for that population.

(C) Taking into account health, abundances, and trends in the donor population, broodstock collection programs reflect appropriate priorities. The primary purpose of broodstock collection programs of listed species is to reestablish indigenous salmonid populations for conservation purposes. Such programs include restoration of similar, at-risk populations within the same ESU, and reintroduction of at-risk populations to underseeded habitat. After the species' conservation needs are met and when consistent with survival and recovery of the ESU, broodstock collection programs may be authorized by NMFS such for secondary purposes, as to sustain tribal, recreational, and commercial fisheries.

(D) The HGMP includes protocols to address fish health, broodstock collection, broodstock spawning, rearing and release of juveniles, deposition of hatchery adults, and catastrophic risk management.

(E) The HGMP evaluates, minimizes, and accounts for the propagation program's genetic and ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by the straying of hatchery fish.

(F) The HGMP describes interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. For programs whose purpose is to sustain fisheries, HGMPs must not compromise the ability of FMEPs or other management plans to conserve listed salmonids.

(G) Adequate artificial propagation facilities exist to properly rear progeny of naturally spawned broodstock, to maintain population health and diversity, and to avoid hatchery-influenced selection or domestication.

(H) Adequate monitoring and evaluation exist to detect and evaluate the success of the hatchery program and any risks potentially impairing the recovery of the listed ESU.

(I) The HGMP provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed;

(J) NMFS provides written concurrence of the HGMP which specifies the implementation and reporting requirements. For Federally operated or funded hatcheries, the ESA section 7 consultation will achieve this purpose.

(K) The HGMP is consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its hatchery program and provides to NMFS on a regular basis a report summarizing this information, and the implementation and effectiveness of the HGMP as defined in NMFS' letter of concurrence. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the HGMP.

(iii) The state confers with NMFS on a regular basis regarding intended collections of listed broodstock to ensure congruity with the approved HGMP.

(iv) Prior to final approval of an HGMP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment for a period of at least 30 days.

(v) NMFS' approval of a plan shall be a written approval by NMFS Southwest or Northwest Regional Administrator, as appropriate.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the HGMP in protecting and achieving a level of salmonid productivity commensurate with the conservation of the listed salmonids. If the HGMP is not effective, the NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit on activities associated with that program. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions, likeall other activity not within a limit, would then apply to that program. A template for developing HGMPs is available from NMFS Northwest Region's website (www.nwr.noaa.gov).

(6) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(7), (a)(8), (a)(10), and (a)(12) through (a)(19) do not apply to actions undertaken in compliance with a resource management plan developed jointly by the States of Washington, Oregon and/or Idaho and the Tribes (joint plan) within the continuing jurisdiction of *United States* v. *Washington* or *United States* v. *Oregon*, the on-going Federal court proceedings to enforce and implement reserved treaty fishing rights, provided that:

(i) The Secretary has determined pursuant to 50 CFR 223.209 and the government-to-government processes therein that implementing and enforcing the joint tribal/state plan will not appreciably reduce the likelihood of survival and recovery of affected threatened ESUs.

(ii) The joint plan will be implemented and enforced within the parameters set forth in *United States* v. *Washington* or *United States* v. *Oregon*.

(iii) In making that determination for a joint plan, the Secretary has taken comment on how any fishery management plan addresses the criteria in § 223.203(b)(4), or on how any hatchery and genetic management plan addresses the criteria in § 223.203(b)(5).

(iv) The Secretary shall publish notice in the **Federal Register** of any determination whether or not a joint plan, will appreciably reduce the likelihood of survival and recovery of affected threatened ESUs, together with a discussion of the biological analysis underlying that determination.

(v) On a regular basis, NMFS will evaluate the effectiveness of the joint plan in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If the plan is not effective, then NMFS will identify to the jurisdiction ways in which the joint plan needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit on activities associated with that joint plan. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions would then apply to that joint plan as to all other activity not within a limit.

(7) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to scientific research activities provided that:

(i) Scientific research activities involving purposeful take is conducted by employees or contractors of the ODFW, WDFW (Agencies), IDFG, or CDFG (Agencies), or as a part of a monitoring and research program overseen by or coordinated with that Agency.

(ii) The Agencies provide for NMFS' review and approval a list of all scientific research activities involving direct take planned for the coming year, including an estimate of the total direct take that is anticipated, a description of the study design, including a justification for taking the species and a description of the techniques to be used, and a point of contact.

(iii) The Agencies annually provide to NMFS the results of scientific research activities directed at threatened salmonids, including a report of the direct take resulting from the studies and a summary of the results of such studies.

(iv) Scientific research activities that may incidentally take threatened salmonids are either conducted by agency personnel, or are in accord with a permit issued by the Agency.

(v) The Agencies provide NMFS annually, for its review and approval, a report listing all scientific research activities it conducts or permits that may incidentally take threatened salmonids during the coming year. Such reports shall also contain the amount of incidental take of threatened salmonids occurring in the previous year's scientific research activities and a summary of the results of such research.

(vi) Electrofishing in any body of water known or suspected to contain threatened salmonids is conducted in accordance with NMFS ''Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act'' (NMFS, 2000a).

(vii) NMFS' approval of a research program shall be a written approval by NMFS Northwest or Southwest Regional Administrator.

(8) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(10), and (a)(12), through (a)(19) do not apply to habitat restoration activities, as defined in paragraph (b)(8)(iv) of this section, provided that the activity is part of a watershed conservation plan, and:

(i) The watershed conservation plan has been certified by the State of Washington, Oregon, Idaho, or California (State) to be consistent with the state's watershed conservation plan guidelines.

(ii) The State's watershed conservation plan guidelines have been found by NMFS to provide for plans that:

(A) Take into account the potential severity of direct, indirect, and cumulative impacts of proposed activities in light of the status of affected species and populations.

(B) Will not reduce the likelihood of either survival or recovery of listed species in the wild.

(C) Ensure that any taking will be incidental.

(D) Minimize and mitigate any adverse impacts.

(E) Provide for effective monitoring and adaptive management.

(F) Use the best available science and technology, including watershed analysis.

(G) Provide for public and scientific review and input.

(H) Include any measures that NMFS determines are necessary or appropriate.

(I) Include provisions that clearly identify those activities that are part of plan implementation.

(J) Control risk to listed species by ensuring funding and implementation of the above plan components.

(iii) NMFS will periodically review state certifications of Watershed Conservation Plans to ensure adherence to approved watershed conservation plan guidelines.

(iv) ''Habitat restoration activity'' is defined as an activity whose primary purpose is to restore natural aquatic or riparian habitat conditions or processes. ''Primary purpose'' means the activity would not be undertaken but for its restoration purpose.

(v) Prior to approving watershed conservation plan guidelines under paragraph (b)(8)(ii) of this section, NMFS will publish notification in the **Federal Register** announcing the availability of the proposed guidelines for public review and comment. Such an announcement will provide for a comment period on the draft guidelines of no less than 30 days.

(9) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to the physical diversion of water from a stream or lake, provided that:

(i) NMFS' engineering staff or any resource agency or tribe NMFS designates (authorized officer) has agreed in writing that the diversion facility is screened, maintained, and operated in compliance with Juvenile Fish Screen Criteria, National Marine Fisheries Service, Northwest Region, Revised February 16, 1995, with Addendum of May 9, 1996, or in California with NMFS' Southwest Region ''Fish Screening Criteria for Anadromous Salmonids, January 1997'' or with any subsequent revision.

(ii) The owner or manager of the diversion allows any NMFS engineer or authorized officer access to the diversion facility for purposes of inspection and determination of continued compliance with the criteria.

(iii) On a case by case basis, NMFS or an Authorized Officer will review and approve a juvenile fish screen design

and construction plan and schedule that the water diverter proposes for screen installation. The plan and schedule will describe interim operation measures to avoid take of threatened salmonids. NMFS may require a commitment of compensatory mitigation if implementation of the plan and schedule is terminated prior to completion. If the plan and schedule are not met, or if a schedule modification is made that is not approved by NMFS or Authorized Officer, or if the screen installation deviates from the approved design, the water diversion will be subject to take prohibitions and mitigation.

(iv) This limit on the prohibitions of paragraph (a) of this section does not encompass any impacts of reduced flows resulting from the diversion or impacts caused during installation of the diversion device. These impacts are subject to the prohibition on take of listed salmonids.

(10) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to routine road maintenance activities provided that:

(i) The activity results from routine road maintenance activity conducted by ODOT employees or agents that complies with ODOT's Transportation Maintenance Management System Water Quality and Habitat Guide (July, 1999); or by employees or agents of a state, county, city or port that complies with a program substantially similar to that contained in the ODOT Guide that is determined to meet or exceed the protections provided by the ODOT Guide; or by employees or agents of a state, county, city or port that complies with a routine road maintenance program that meets proper functioning habitat conditions as described further in subparagraph (ii) following. NMFS' approval of state, city, county, or port programs that are equivalent to the ODOT program, or of any amendments, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. Any jurisdiction desiring its routine road maintenance activities to be within this limit must first commit in writing to apply management practices that result in protections equivalent to or better than those provided by the ODOT Guide, detailing how it will assure adequate training, tracking, and reporting, and describing in detail any dust abatement practices it requests to be covered.

(ii) NMFS finds the routine road maintenance activities of any state, city, county, or port to be consistent with the conservation of listed salmonids' habitat when it contributes, as does the ODOT Guide, to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than one year, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iii) Prior to implementing any changes to a program within this limit the jurisdiction provides NMFS a copy of the proposed change for review and approval as within this limit.

(iv) Prior to approving any state, city, county, or port program as within this limit, or approving any substantive change in a program within this limit, NMFS will publish notification in the **Federal Register** announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of not less than 30 days.

(v) Pesticide and herbicide spraying is not included within this limit, even if in accord with the ODOT guidance.

(11) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to activities within the City of Portland, Oregon Parks and Recreation Department's (PP&R) Pest Management Program (March 1997), including its Waterways Pest Management Policy updated December 1, 1999, provided that:

(i) Use of only the following chemicals is included within this limit on the take prohibitions: Round Up, Rodeo, Garlon 3A, Surfactant LI–700, Napropamide, Cutrine Plus, and Aquashade.

(ii) Any chemical use is initiated in accord with the priorities and decision processes of the Department's Pest Management Policy, including the Waterways Pest Management Policy, updated December 1, 1999.

(iii) Any chemical use within a 25 ft. (7.5 m) buffer complies with the buffer application constraints contained in PP&R's Waterways Pest Management Policy (update December 1, 1999).

(iv) Prior to implementing any changes to this limit, the PP&R provides NMFS with a copy of the proposed change for review and approval as within this limit.

(v) Prior to approving any substantive change in a program within this limit, NMFS will publish notification in the **Federal Register** announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days.

(vi) NMFS' approval of amendments shall be a written approval by NMFS Northwest Regional Administrator.

(vii) NMFS finds the PP&R Pest Management Program activities to be consistent with the conservation of listed salmonids' habitat by contributing to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of a watershed's natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate the effectiveness of an approved program in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not

protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(12) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to municipal, residential, commercial, and industrial (MRCI) development (including redevelopment) activities provided that:

(i) Such development occurs pursuant to city, county, or regional government ordinances or plans that NMFS has determined are adequately protective of listed species; or within the jurisdiction of the Metro regional government in Oregon and pursuant to ordinances that Metro has found comply with its Urban Growth Management Functional Plan (Functional Plan) following a determination by NMFS that the Functional Plan is adequately protective. NMFS approval or determinations about any MRCI development ordinances or plans, including the Functional Plan, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. NMFS will apply the following 12 evaluation considerations when reviewing MRCI development ordinances or plans to assess whether they adequately conserve listed salmonids by maintaining and restoring properly functioning habitat conditions:

(A) MRCI development ordinance or plan ensures that development will avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(B) MRCI development ordinance or plan adequately avoids stormwater discharge impacts to water quality and quantity or to the hydrograph of the watershed, including peak and base flows of perennial streams.

(C) MRCI development ordinance or plan provides adequately protective riparian area management requirements to attain or maintain PFC around all rivers, estuaries, streams, lakes, deepwater habitats, and intermittent streams. Compensatory mitigation is provided, where necessary, to offset unavoidable damage to PFC due to MRCI development impacts to riparian management areas.

(D) MRCI development ordinance or plan avoids stream crossings by roads, utilities, and other linear development wherever possible, and, where crossings must be provided, minimize impacts through choice of mode, sizing, and placement.

(E) MRCI development ordinance or plan adequately protects historical stream meander patterns and channel migration zones and avoids hardening of stream banks and shorelines.

(F) MRCI development ordinance or plan adequately protects wetlands and wetland functions, including isolated wetlands.

(G) MRCI development ordinance or plan adequately preserves the hydrologic capacity of permanent and intermittent streams to pass peak flows.

(H) MRCI development ordinance or plan includes adequate provisions for landscaping with native vegetation to reduce need for watering and application of herbicides, pesticides, and fertilizer.

(I) MRCI development ordinance or plan includes adequate provisions to prevent erosion and sediment run-off during construction.

(J) MRCI development ordinance or plan ensures that water supply demands can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(K) MRCI development ordinance or plan provides necessary enforcement, funding, reporting, and implementation mechanisms and formal plan evaluations at intervals that do not exceed 5 years.

(L) MRCI development ordinance and plan complies with all other state and Federal environmental and natural resource laws and permits.

(ii) The city, county or regional government provides NMFS with annual reports regarding implementation and effectiveness of the ordinances, including: any water quality monitoring information the jurisdiction has available; aerial photography (or some other graphic display) of each MRCI development or MRCI expansion area at sufficient detail to demonstrate the width and vegetation condition of riparian set-backs; information to demonstrate the success of stormwater management and other conservation measures; and a summary of any flood damage, maintenance problems, or other issues.

(iii) NMFS finds the MRCI development activity to be consistent with the conservation of listed salmonids' habitat when it contributes to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed's habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iv) Prior to approving any city, county, or regional government ordinances or plans as within this limit, or approving any substantive change in an ordinance or plan within this limit, NMFS will publish notification in the **Federal Register** announcing the availability of the ordinance or plan or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days.

(13) The prohibitions of paragraph (a) of this section relating to threatened

species of salmonids listed in § 223.102 (a)(12), (a)(13), (a)(16), (a)(17), and (a)(19) do not apply to non-Federal forest management activities conducted in the State of Washington provided that:

(i) The action is in compliance with forest practice regulations adopted and implemented by the Washington Forest Practices Board that NMFS has found are at least as protective of habitat functions as are the regulatory elements of the Forests and Fish Report dated April 29, 1999, and submitted to the Forest Practices Board by a consortium of landowners, tribes, and state and Federal agencies.

(ii) All non-regulatory elements of the Forests and Fish Report are being implemented.

(iii) Actions involving use of herbicides, pesticides, or fungicides are not included within this limit.

(iv) Actions taken under alternative plans are included in this limit provided that the Washington Department of Natural Resources (WDNR) finds that the alternate plans protect physical and biological processes at least as well as the state forest practices rules and provided that NMFS, or any resource agency or tribe NMFS designates, has the opportunity to review the plan at every stage of the development and implementation. A plan may be excluded from this limit if, after such review, WDNR determines that the plan is not likely to adequately protect listed salmon.

(v) Prior to determining that regulations adopted by the Forest Practice Board are at least as protective as the elements of the Forests and Fish Report, NMFS will publish notification in the **Federal Register** announcing the availability of the Report and regulations for public review and comment.

(vi) NMFS finds the activities to be consistent with the conservation of listed salmonids' habitat by contributing to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed's natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Programs must meet this biological standard in order for NMFS to find they qualify for a habitat-related limit. NMFS uses the best available science to make these determinations. NMFS may review and revise previous findings as new scientific information becomes available. NMFS will evaluate the effectiveness of the program in maintaining and achieving habitat function that provides for conservation of the listed salmonids. If the program is not adequate, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If Washington does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to withdraw the limit on activities associated with the program. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) take prohibitions.

(vii) NMFS approval of regulations shall be a written approval by NMFS Northwest Regional Administrator.

(c) *Affirmative defense*. In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19), any person claiming the benefit of any limit listed in paragraph (b) of this section or § 223.209(a) shall have a defense where the person can demonstrate that the limit is applicable and was in force, and that the person fully complied with the limit at the time of the alleged violation. This defense is an affirmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section (a)(1)(G) of the ESA with respect to the alleged violation.

(d) *Severability*. The provisions of this section and the various applications thereof are distinct and severable from one another. If any provision or the application thereof to any person or circumstances is stayed or determined to be invalid, such stay or invalidity shall not affect other provisions, or the application of such provisions to other persons or circumstances, which can be given effect without the stayed or invalid provision or application.

[FR Doc. 00–16933 Filed 7–7–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 991207318–0159–02; I.D. No 092799G]

RIN 0648–AG15

Limitation on Section 9 Protections Applicable to Salmon and Steelhead Listed as Threatened under the Endangered Species Act (ESA), for Actions Under Tribal Resource Management Plans

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is issuing a final rule to modify the ESA section 9 take prohibitions applied to threatened salmon and steelhead. The modification will create a section 4(d) limitation on those prohibitions for tribal resource management plans (Tribal Plans), where the Secretary of Commerce (Secretary) has determined that implementing that Tribal Plan will not appreciably reduce the likelihood of survival and recovery for the listed species. This rule intends to harmonize statutory conservation requirements with tribal rights and the Federal trust responsibility to tribes.

DATES: Effective September 8, 2000.

ADDRESSES: Branch Chief, NMFS, Northwest Region, Protected Resources Division, 525 NE. Oregon St., Suite 500, Portland, OR 97232–2737; Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; Salmon Coordinator, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at 503-231-2005; Craig Wingert at 562–980–4021.

Electronic Access

Reference materials regarding this final rule can also be obtained from the internet at www.nwr.noaa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

Indian Tribe—Any Indian tribe, band, nation, pueblo, community or other organized group within the United States which the Secretary of the Interior has identified on the most current list of tribes maintained by the

Bureau of Indian Affairs (65 FR 13298, March 13, 2000).

Tribal rights—Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and which give rise to legally enforceable remedies.

Tribal trust resources—Those natural resources, either on or off Indian lands, retained by, or reserved by or for Indian tribes through treaties, statutes, judicial decisions, and executive orders, which are protected by fiduciary obligation on the part of the United States.

Indian lands—Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Background

For the past decade NMFS has been conducting ESA status reviews for salmon and steelhead throughout the Pacific Northwest and California. To date, these reviews have identified 20 population groups, or ''evolutionarily significant units'' (ESUs), that warrant threatened status under the ESA. Section 4(d) of the ESA provides that whenever a species is listed as threatened, the Secretary shall issue such regulations (i.e., ''4(d) rules'') as he deems necessary and advisable for the conservation of the species. Such 4(d) rules may include any or all of the prohibitions that apply automatically to protect endangered species under ESA section 9(a). Those section 9(a) prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as endangered, unless with written authorization for incidental take. NMFS has promulgated ESA 4(d) rules that apply the section 9 take prohibitions to nearly all threatened salmon and steelhead ESUs. In a recent ESA 4(d) rule addressing 14 of these ESUs (i.e., the salmon/steelhead 4(d) rules published elsewhere in this **Federal Register** issue), NMFS determined it is not necessary and advisable to apply the section 9 take prohibitions to specified categories of activities that contribute to conserving listed salmonids or are governed by a program that adequately limits impacts on listed salmonids. NMFS also determined it is not necessary or advisable to prohibit activities associated with Tribal resource management activities when those activities conserve listed salmonids or adequately limit impacts on listed salmonids. NMFS accordingly proposed a parallel ESA 4(d) rule for Tribal Plans (i.e., a tribal plan limit) (65 FR 111, January 3, 2000). In that proposal, NMFS announced a process whereby a tribe could conduct tribal trust resource management actions that may take threatened salmonids, without the risk of violating take prohibitions adopted under ESA section 4(d). Eligibility for such limits on take prohibitions would require a determination by the Secretary that implementing a specific Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the listed species. The purpose of this rule is to establish a process that will enable the Secretary to meet the conservation needs of listed species while respecting tribal rights, values and needs, and not causing an abridgement of any treaties, rights, executive orders, or statutes. The limit on take prohibitions would encompass a variety of types of Tribal Plans, including but not limited to, plans that address fishery harvest, artificial propagation, research, or water or land management. Tribal Plans could be developed by one tribe or jointly with other tribes. Where there exists a Federal court proceeding with continuing jurisdiction over the subject matter of a Tribal Plan, the plan may be developed and implemented within the ongoing Federal court proceeding.

This final rule acknowledges that the United States has a unique legal relationship with Indian tribes as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions. The appropriate exercise of its trust obligation commits the United States to harmonize its many statutory responsibilities with the tribal exercise of tribal sovereignty, tribal rights, and tribal self-determination. NMFS believes that this final rule recognizes the unique legal and political relationships between tribes and the United States, and is in keeping with the trust responsibility to Indian tribes. Furthermore, NMFS believes that additional Federal protections are not needed for activities carried out under those Tribal Plans deemed by the Secretary to not appreciably reduce the likelihood of survival and recovery of an ESU.

Summary of Comments and Information Received in Response to the Proposed Rule

Between January 10 and February 22, 2000, NMFS held 25 public hearings in Washington, Oregon, Idaho, and California to allow for public testimony and to discuss the proposed tribal plan limit and salmon/steelhead ESA 4(d) rules. The agency also requested comments from all interested parties and conferred with affected tribes throughout the Pacific Northwest and California. The agency received approximately 20 written comments pertaining to the proposed tribal plan limit. New information, comments, and responses are summarized here. Copies of references, reports and related documents are available upon request (see **ADDRESSES**).

Comment 1: Numerous tribal commenters addressed the issue of government-to-government consultation. Commenters cited concerns that consultation had not occurred during the development of the tribal plan limit and salmon/steelhead ESA 4(d) rules and underscored the need for NMFS to consult with tribes as these rules are implemented.

Response: Throughout the development of the tribal plan limit and salmon/steelhead ESA 4(d) rules NMFS has made a concerted effort to notify and confer with tribal representatives and technical staff throughout the Pacific Northwest and California. Contact regarding these rules began before December 1998, when a draft steelhead ESA 4(d) rule was submitted for review to affected tribes well in advance of the proposed rules. During a 2-year period, NMFS coordinated and attended a number of meetings and working sessions with tribal governments and representatives (including staff from inter-tribal fisheries commissions) to discuss particular aspects of the rules. These meetings allowed NMFS to develop proposed ESA 4(d) rules that the agency believes address a wide range of issues highlighted by the tribes. Since publication of the proposed 4(d) rules NMFS and tribal staffs and tribal council members have met to discuss these rules.

NMFS recognizes the need to work closely with the tribes of the region to develop and improve upon information exchange and consultation opportunities relating to salmon and steelhead conservation. Since beginning work on these ESA 4(d) rules, NMFS' Northwest Region has added a tribal liaison position to its staff to focus on improving communications with the

tribes and developing consultation procedures that will meet both NMFS and tribal needs. It is the agency's intent to continue working with tribal governments to develop regularly scheduled meetings between NMFS and tribal technical staff and policy makers to provide more timely notice regarding NMFS' activities and to discuss how consultation might occur for future fisheries issues and ESA rulemaking.

There remains the opportunity for the tribes and the agency to hold future discussions on application of the ESA 4(d) rules. Such future discussions can include the identification of cultural/economic issues requiring the agency's attention and ideas on how such analyses should be conducted. In response to tribal requests, NMFS will correspond with each commenting tribal government, clarify how its comments were addressed, and identify the need for additional meetings to discuss potential amendments and/or modifications to the rules.

Comment 2: Many commenters challenged the basis for a Secretarial review of Tribal Plans. Their comments ranged in scope from questioning the appropriateness of Secretarial review and public notification (e.g., the disclosure of confidential tribal information), to specific comments on Tribal Plan contents, standards and time frames. One commenter suggested that the time period covered by a Tribal Plan be fixed (e.g., a 1-year plan with annual reviews) while another suggested that the period covered by the plan be similar to that for ESA section 10 Habitat Conservation Plans (HCPs), which can extend for a number of years. Another commenter suggested that the scope covered by the tribal plan limit be expanded (e.g., to include all listed species and ESUs versus the four stocks specifically identified in the Tribal 4(d) proposed rule's Summary Section).

Some commenters addressed the Secretarial review process, in particular the need to take into account the impacts of non-tribal activities on the listed species so that any assessment of Tribal Plans would accurately assess impacts that are beyond tribal control. After such review has been completed, and if a Tribal Plan was found to be insufficient, some commenters stated the Secretary should provide specific comments to the affected tribe(s) so that they have an opportunity to respond. These and other commenters noted that NMFS has an obligation to abide by Principle 3(C) (i.e., the ''Conservation Necessity Principle'') of the June 1997 Secretarial Order No. 3206 entitled ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (Secretarial Order). Additionally, some commenters suggested the Secretarial review have specific time constraints (e.g., 60 days) so tribes could plan on implementing approved actions in a timely manner.

Response: The nature of some of these comments suggests a general misunderstanding regarding the purpose of Secretarial review. Secretarial review will determine if implementation of the plan will appreciably reduce the likelihood of survival and recovery of the listed species. The Secretary will not review the Tribal Plan to determine adequacy of meeting tribal goals and objectives. A determination that an action may or may not reduce the likelihood of survival or recovery will be made in the context of the operative environmental conditions at the local (site-specific) and ESU levels. There are legitimate concerns about disproportionate conservation requirements being placed on the tribes when surrounding non-Indian lands are in extremely degraded conditions. These concerns are addressed in other comments/responses in this document.

NMFS respectfully disagrees with the suggestion that tribes should have the ultimate responsibility for making a determination that a Tribal Plan will not appreciably reduce the likelihood of survival and recovery of threatened salmon or steelhead. This determination cannot be delegated by the Secretary to a tribal government. However, NMFS agrees that in making the determination it must work closely with the tribes to determine the level of impact, if any, on threatened species. As suggested by one tribal commenter, this means the Secretary shall consider data and analysis provided by the tribe and shall defer, where appropriate, to the tribe's conclusion that a Tribal Plan does not appreciably reduce the likelihood of survival and recovery of the species. If the Secretary determines a Tribal Plan should be modified, the tribe will be informed as soon as possible with a detailed explanation of what changes are recommended and the reason for the changes.

It is NMFS' view that, given the sovereign status of the tribes it is inappropriate to describe in this final rule the specific qualifying criteria for Tribal Plans. The plans will be held to the same fundamental ESA standard as any other activity, and will be evaluated consistent with principles outlined in the Secretarial Order. NMFS will work with tribes to the maximum extent practicable to craft plans that will meet the needs of listed species and accomplish the goals of the tribes. Furthermore, NMFS recognizes, as stated in the Secretarial Order, that it has a trust obligation to minimize impacts on tribes as much as possible while still meeting agency responsibilities under the ESA.

With respect to reporting requirements, NMFS believes it would be inappropriate to require a specific time period for all Tribal Plans, and instead prefers to allow tribes to suggest schedules that meet their needs. Also, it is not feasible to place mandatory time limits on the Secretary's review since the Tribal Plans themselves will likely vary considerably in size and complexity. Regarding the scope of the tribal plan limit, the proposed rule states this rule would apply to all existing and future listings of threatened salmonids promulgated by NMFS ''whenever final protective regulations make the take prohibitions of ESA section 9(a) applicable'' to the particular species/ESU.

Finally, regarding the process for public notification, NMFS is obliged to make public the determinations made under section 4 of the ESA. This is in contrast with other statutory provisions (e.g., ESA section 7 consultations) that do not include public review and comment processes. If the tribes elect to develop and submit plans under the tribal plan limit, the pending determination of the Secretary regarding survival and recovery of listed species is subject to public review and comment. However, public notification will focus on those features of a Tribal Plan needed to understand the Secretary's pending determination and NMFS will take all appropriate actions to ensure confidential information is protected to the maximum extent possible under applicable law. Furthermore, the public notification process will focus on the Secretary's pending decision, not on the Tribal Plan. In other words the agency will consider only those comments concerning the adequacy of the Secretary's pending determination that a Tribal Plan will or will not result in an appreciable reduction in the likelihood of survival and recovery.

Comment 3: While a number of commenters questioned the applicability of the ESA to tribal actions, other commenters contended that the tribal plan limit fails to meet the standards necessary for compliance with the ESA. Several commenters reminded NMFS of its trust relationship with tribal governments and the need to comply with existing judicially mandated procedures/processes (e.g., harvest issues) concerning trust resource management. One commenter questioned the applicability of the rule

to ''all Federally recognized tribes'' and expressed concern that the agency would be in the position of expanding ''off-reservation rights.''

Response: The tribal plan limit was developed to be consistent with the agency's obligation to conserve listed species under the ESA and meet trust obligations to Indian tribes. NMFS concludes this final rule responds to both mandates, but it is clearly the prerogative of any tribe to choose whether to submit a Tribal Plan for review under the tribal plan limit. By meeting its responsibility under ESA, in conjunction with obligations under the Secretarial Order, NMFS can meet its trust responsibilities to the tribes while improving the condition of salmon, steelhead, and other trust resources as well. NMFS is fully cognizant of these trust responsibilities and notes that the agency routinely consults with affected tribes on harvest and hatchery actions via section 7 of the ESA. This occurs in court mandated procedures such as *U.S.* v. *Oregon* and *U.S.* v. *Washington*, as well as for actions not covered by judicial requirements.

The unique political and constitutional relationship between the United States and Indian tribes as described in this rule involves Federally recognized tribes. It would be inappropriate to base the tribal plan limit's applicability on some other characteristic such as possession of off-reservation fishing rights. The agency's compliance with the ESA, the Secretarial Order, and its trust obligations to the tribes will not expand any rights held by the tribes. Those rights and authorities exist by virtue of the tribe being a sovereign entity; NMFS does not have the ability to limit or expand them.

Comment 4: A number of commenters expressed views regarding tribal treaty rights, tribal impacts on listed species, and the conservation burden placed on both tribal and non-tribal entities. While some commenters were concerned the tribal plan limit may give the tribes a ''blank check'' to conduct activities as they please, others were concerned the rule may infringe upon pre-existing tribal rights (e.g., fishing and water rights). Some commenters agreed that NMFS needs to find a way to harmonize ESA and tribal trust responsibilities, in particular relating to issues concerning terminal fisheries (i.e., fisheries typically occurring near river mouths or hatchery release sites where the targeted species is returning to spawn) and harvest/hatchery management. Other commenters stated they did not agree with NMFS' assertion that tribal actions have not been major factors contributing to the decline of salmon and steelhead.

Response: NMFS believes that by meeting its responsibilities under the ESA, in conjunction with the obligations under the Secretarial Order, it will not only meet its trust responsibilities to the tribes, but improve the status of trust resources. It is the agency's intent to continue working with the tribes to identify how best to meet these responsibilities without infringing upon pre-existing tribal rights. Similarly, NMFS believes this rule will assist the agency in ensuring there is not a disproportionate conservation burden placed on either tribal or non-tribal parties. As noted previously in this document, NMFS expects an equitable balance can be achieved by holding all parties to a standard that supports the concepts of viable salmonid populations and properly functioning habitat conditions.

NMFS disagrees with comments suggesting the tribal plan limit will provide a ''blank check'' to the tribes to conduct activities that may affect listed species. Although the tribes and Federal government maintain a unique relationship, NMFS has an important role in administering the ESA. This includes reviewing Tribal Plans to assess and determine that proposed actions do not appreciably reduce the likelihood of survival and recovery.

NMFS strongly concurs that tribes in terminal fisheries areas are placed at a significant disadvantage when they attempt to exercise their treaty or trust rights to harvest fish. The majority of salmon or steelhead harvested in these fisheries are likely to be listed under the ESA, offering little or no opportunity to pursue a NMFS authorization for incidental take. It is difficult to characterize such harvest as ''incidental'' take. This is in contrast to harvest that occurs in fisheries in which listed fish intermingle with unlisted fish (''mixed-stock fisheries''). This issue was an important motivation for NMFS to develop the tribal plan limit. Adoption of this limit will enable NMFS to authorize tribal harvest in terminal fisheries, so long as NMFS concludes that harvest will not impair the survival and recovery of the listed ESU. Tribes exercising their rights to fish will no longer be held to a different standard than others who have opportunities to harvest fish in mixed-stock fisheries, or who take listed fish when conducting other non-harvest activities.

Finally, in stating that ''[T]ribal activities have not been identified as major factors contributing to the decline of threatened species,'' the agency considered the totality of tribal actions in the context of all historic impacts on the species. Tribes have a long history of promoting sound resource management in a manner that takes into account a wide variety of environmental values, including ESA-listed species.

Comment 5: Numerous commenters voiced concerns about the construct of the proposed rule both in general and specific terms. Some stated a separate 4(d) rule for Tribal Plans was unnecessary and undesirable. Others referenced a court decision indicating that, absent direct legislative language, NMFS' trust obligations would be fulfilled by compliance with general regulations and statutes. Others were concerned with the lack of specific standards.

Response: The tribal plan limit is an affirmative expression of NMFS' trust relationship with the tribes. The judicial case cited by several commenters involved the Federal Aviation Administration which, unlike NMFS' management authority over imperiled trust resources (e.g., marine mammals and listed salmon and steelhead), is not likely to involve a constant, almost daily interaction with numerous Indian tribes. Therefore, developing a rule that pertains to the daily interaction of the agency and the tribes seems to be most appropriate.

Changes to the Proposed Rule

NMFS is modifying the proposed rule based on comments and new information received. The regulatory language has been modified to: (1) include the phrase ''tribal employee'' in the list of entities subject to the tribal plan limit; and (2) clarify that a Tribal Plan could address ''water management'' activities.

Procedures for Implementing the ESA 4(d) Limit for Tribal Plans

This final rule recognizes and implements the commitment to government-to-government relations made by the President and the Secretary of Commerce. A tribe intending to exercise a tribal right to fish or undertake other resource management actions that may impact threatened salmonids could create a Tribal Plan that would assure that those actions would not appreciably reduce the likelihood of survival and recovery of the species. The Secretary stands ready to the maximum extent practicable to provide technical assistance to any tribe that so requests in examining impacts on listed salmonids and other salmonids and in the development of Tribal Plans that meet tribal management responsibilities and needs. In making a determination whether a Tribal Plan will appreciably reduce the likelihood

of survival and recovery of threatened salmonids, the Secretary, in consultation with the tribe, will use the best available scientific and commercial data (including careful consideration of any tribal data and analysis) to determine the Tribal Plan's impact on the biological requirements of the species. The Secretary will also assess the effect of the Tribal Plan on survival and recovery in a manner consistent with tribal rights and trust responsibilities. Before making a final determination, the Secretary shall seek comment from the public on his pending determination whether or not implementation of a Tribal Plan will appreciably reduce the likelihood of survival and recovery of the listed salmonids. The Secretary shall publish notification in the **Federal Register** of any determination regarding a Tribal Plan and the basis for that determination.

Classification

The Chief Counsel for Regulation of the Department of Commerce has certified that this rule would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required. This rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13084—Consultation with Indian Tribal Governments

The United States has a unique relationship with tribal governments as set forth in the Constitution, treaties, statutes, and Executive Orders. In keeping with this unique relationship, with the mandates of the Presidential Memorandum on Government to Government Relations With Native American Tribal Governments (59 FR 22951), and with Executive Order 13084, NMFS has developed this final rule in close coordination with tribal governments and organizations. This final rule reflects many of the suggestions brought forth by tribal representatives during that process. NMFS' coordination during development of this tribal rule has included meetings with tribes and tribal organizations, and individual staff-to-staff conversations. Moreover, NMFS will continue to give careful consideration to all tribal comments and will continue its contacts and discussions with interested tribes as this final rule is implemented.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648-0399. Public reporting burden per response for this collection of information is estimated to average 20 hours for a tribal plan. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

National Environmental Policy Act

This final rule does not require the preparation of Tribal Plans. For most plans on which tribes request a NMFS determination under this limit, the Bureau of Indian Affairs or another agency, will have performed an NEPA analysis at the time they are developed. In the case of any tribal plan for which NEPA analysis has not been performed by another agency, NMFS will prepare an environmental analysis. Hence, NMFS has determined that this rule will not of its own force result in any changes to the human environment. Any plans determined to come within this limit will be evaluated under NEPA either by NMFS or another federal agency, prior to that determination. Therefore, this rule is categorically excluded from the need to prepare an Environmental Assessment, in accord with NOAA Administrative Order 216–6 (3)(d) and (f).

References

A list of references cited in this final rule is available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Fish, Fisheries, Imports, Indians, Intergovernmental relations, Marine mammals, Treaties.

Dated: June 19, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. Section 223.209 is added to read as follows:

§ 223.209 Tribal plans.

(a) *Limits on the prohibitions.* The prohibitions of § 223.203(a) of this subpart relating to threatened species of salmonids listed in § 223.102 do not apply to any activity undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in compliance with a Tribal resource management plan (Tribal Plan), provided that the Secretary determines that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the listed salmonids. In making that determination the Secretary shall use the best available biological data (including any tribal data and analysis) to determine the Tribal Plan's impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with legally enforceable tribal rights and with the Secretary's trust responsibilities to tribes.

(b) *Consideration of a Tribal Plan.* (1) A Tribal Plan may include but is not limited to plans that address fishery harvest, artificial production, research, or water or land management, and may be developed by one tribe or jointly with other tribes. The Secretary will consult on a government-to-government basis with any tribe that so requests and will provide to the maximum extent practicable technical assistance in examining impacts on listed salmonids and other salmonids as tribes develop Tribal resource management plans that meet the management responsibilities and needs of the tribes. A Tribal Plan must specify the procedures by which the tribe will enforce its provisions.

(2) Where there exists a Federal court proceeding with continuing jurisdiction over the subject matter of a Tribal Plan, the plan may be developed and implemented within the ongoing Federal Court proceeding. In such circumstances, compliance with the

Tribal Plan's terms shall be determined within that Federal Court proceeding.

(3) The Secretary shall seek comment from the public on the Secretary's pending determination whether or not implementation of a Tribal Plan will appreciably reduce the likelihood of survival and recovery of the listed salmonids.

(4) The Secretary shall publish notification in the **Federal Register** of any determination regarding a Tribal Plan and the basis for that determination.

[FR Doc. 00–16932 Filed 7–7–00; 8:45 am]

BILLING CODE 3510–22–F

Federal Register

Monday,
July 10, 2000

Part III

Department of Housing and Urban Development

24 CFR Part 990

Allocation of Operating Subsidies Under the Operating Fund Formula; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–P–11]

RIN: 2577–AB88

Allocation of Operating Subsidies Under the Operating Fund Formula

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule is the first stage in HUD's rulemaking process to implement an interim Operating Fund Formula for determining the payment of operating subsidies to public housing agencies (PHAs). As required by statute, this proposed rule was developed through negotiated rulemaking procedures. The policies and procedures described in this proposed rule would govern the determination of funding distributions to PHAs under the Operating Fund until a final rule, reflecting the results of a congressionally requested public housing cost study, is developed and published. Pending the completion of the cost study and the issuance of superseding rules based on the study, HUD will proceed to consider the public comments received on this proposed rule and to issue, in the next stage of this rulemaking process, an interim rule based on this proposed rule and the public comments received on the proposed rule.

DATES: *Comments Due Date:* August 9, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Room 10276, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Steve Sprague, Funding and Financial Management Division, Office of Public and Indian Housing, Room 4216, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1872 (this telephone number is not toll-free). 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:

I. Background

A. The Performance Funding System (PFS)

HUD currently uses a formula approach called the Performance Funding System (PFS) to distribute operating subsidies to public housing agencies (PHAs). HUD's regulations implementing the PFS can be found at 24 CFR part 990. Generally, the amount of operating subsidy received by a PHA is the difference between projected expenses and projected income, with the PFS regulations detailing how these projections will be made. PHAs calculate their PFS eligibility annually and submit a request for funding as part of their budget process. While the amount varies, this subsidy represents a substantial amount of revenue to a PHA. For example, in 1999, HUD distributed approximately $2.9 billion in operating subsidies to PHAs.

The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (referred to as the ''1937 Act'') establishes the statutory framework for HUD's public housing programs. The 1937 Act limits eligibility to public housing to low income families, and caps public housing rents at 30 percent of a family's income. PHAs must therefore rely on the HUD operating subsidies (rather than rental income) to cover a significant amount of the costs associated with the operation of their public housing units.

B. Public Housing Reform

On October 21, 1998, the Congress enacted the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276, approved October 21, 1998) (referred to as the ''Public Housing Reform Act''). The Public Housing Reform Act makes sweeping changes to HUD's public and assisted housing programs. Among other changes, section 519 of the Public Housing Reform Act amended section 9 of the 1937 Act (42 U.S.C. 1437g). Amended section 9 establishes an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. Section 9(f) of the 1937 Act, as amended by the Public Housing Reform Act, requires that the assistance to be made available from that fund be determined using a formula developed through negotiated rule-making procedures as set forth in subchapter III of chapter 5 of title 5, United States Code (5 U.S.C. 561 *et. seq.*), commonly referred to as the Negotiated Rulemaking Act of 1990.

II. Negotiated Rulemaking

A. The Convening Report

Negotiated rulemaking, or ''neg-reg,'' is a relatively new process for HUD. The basic concept of neg-reg is to have the agency that is considering drafting a rule bring together representatives of affected interests for face-to-face negotiations that are open to the public. The give-and-take of the negotiation process is expected to foster constructive, creative and acceptable solutions to difficult problems.

In anticipation of possible congressional action, HUD entered into an interagency agreement in June 1998 with the Federal Mediation and Conciliation Service (FMCS) for convening and facilitation services associated with a negotiated rulemaking regarding a possible operating fund proposed rule. FMCS submitted its Convening Report in November 1998. The report provided a list of individual PHAs and organizations, representing a wide range of interests, that were willing and able to work within a consensus framework on a new Operating Fund formula.

B. HUD's Negotiated Rulemaking Committee on Operating Fund Allocation

On February 3, 1999 (64 FR 5570), HUD published a notice announcing its intent to establish a negotiated rulemaking committee for the Operating Fund. This notice identified a list of possible interested individuals and organizations to serve on the negotiated rulemaking committee. The list of possible interested individuals and organizations included PHAs, national organizations representing PHAs, residents organizations, advocates for low-income housing, and other housing experts.

On March 16, 1999 (64 FR 12920), HUD published a notice announcing the establishment of its Negotiated Rulemaking Committee on Operating Fund Allocation (the ''Committee''). The notice also provided the list of Committee members and announced its first set of meetings. The members participating in the negotiated rulemaking procedure for the Operating Fund are:

- Large Housing Authorities
  1. Atlanta Housing Authority, Atlanta, GA
  2. Chicago Housing Authority, Chicago, IL
  3. New York City Housing Authority, NYC, NY

4. Pittsburgh Housing Authority, Pittsburgh, PA
5. Seattle Housing Authority, Seattle, WA

- Medium Housing Authorities
  1. Akron Metro Housing Authority, Akron, OH
  2. Athens Housing Authority, Athens, GA
  3. Indianapolis Housing Agency, Indianapolis, IN
  4. Oakland Housing Authority, Oakland, CA
  5. Reno Housing Authority, Reno, NV
- Small Housing Authorities
  1. Marble Falls Housing Authority, Marble Falls, TX
  2. Meade County Housing and Redevelopment Commission, Sturgis, SD
  3. York Housing Authority, York, NE
- Non-PFS Housing Authority
  1. Puerto Rico Public Housing Administration, San Juan, PR
- Resident Organizations
  1. Massachusetts Union of Public Housing Tenants, Dorchester MA
  2. New Jersey Association of Public and Subsidized Housing Residents, Inc., Newark, NJ
- Public Interest Groups
  1. National Low Income Housing Coalition, Washington, DC
  2. Housing and Development Law Institute, Washington, DC
  3. Center for Community Change, Washington, DC
  4. National Organization of African-Americans in Housing (NOAAH)
- National PHA Associations
  1. Public Housing Authorities Directors Association (PHADA)
  2. National Association of Housing and Redevelopment Officials (NAHRO)
  3. Council of Large Public Housing Authorities (CLPHA)
- Federal Government
  1. U.S. Department of Housing and Urban Development

Additionally, two FMCS representatives served as facilitators. The Committee first convened on March 23–24, 1999. Additional Committee meetings were held on April 13–14, May 13–14, June 15–16, July 7–8, September 14–15, November 30–December 2, 1999; February 16–17, 2000; and March 7–8, 2000. All Committee meetings were held in the Washington, DC metro area. The Committee meetings were announced in the **Federal Register**. Members of the public were invited to attend the meetings and to submit their views and recommendations.

III. This Proposed Rule

This proposed rule is the product of the Committee's successful negotiations, and reflects the consensus decisions reached over nearly a year's worth of deliberations. The proposed rule is the first stage in the rulemaking process that will establish an Operating Fund formula, to replace the current PFS regulations located in 24 CFR part 990. The rule thus represents a partnership among HUD, the PHAs, public housing residents, and advocates of public housing. The policies and procedures described in this proposed rule would govern the determination of funding distributions to PHAs under the Interim Operating Fund Formula until a final rule, reflecting the results of a Congressionally requested public housing cost study, is developed and published (see Section XIII. of this preamble for further information regarding the cost study).

It became apparent to the Committee during its deliberations that sufficient data were not available to either establish the true costs of operating public housing or to develop final modifications to the existing PFS regulations without an unacceptable degree of unpredictability. The Committee determined, therefore, to recommend that a comprehensive cost study be undertaken to provide data and recommendations necessary for finalizing an Operating Fund Formula. A consensus also became apparent that, pending the results of the housing cost study, there exist urgent needs and tangible benefits from implementing the proposed Interim Operating Fund Formula. Accordingly, the Interim Operating Fund Formula that would be established by this proposed rule is largely based on the policies and procedures that have heretofore governed the PFS. The Committee has decided to recommend several important modifications to the existing PFS regulations. These modifications would address, to the extent feasible under data presently available to the public, five specific proposals considered important by members of the Committee.

The proposed rule would: (1) Modify the method by which ''small PHAs'' are funded in order to assure an adequate minimum level funding, based on nationally averaged operating costs for multifamily housing projects insured by the Federal Housing Administration (FHA), adjusted for unit size differences and locational cost differences; (2) implement statutory changes permitting PHAs to retain certain rental and non-rental income without offset against operating subsidy; (3) retain the current method of estimating utility expenses, but would eliminate year-end adjustments, for the costs of utilities, reflecting the adjustments instead, in the PHA's operating subsidy calculation for the second PHA fiscal year following the year being adjusted, and in order to encourage energy efficiency, it would replace the current 50–50 split of savings or increase in cost due to changes in utilities consumption to a 75–25 split between PHAs and HUD, respectively; (4) require each PHA to include in its operating subsidy calculation, $25 per occupied unit per year for resident participation activities as an add on expense component for subsidy eligibility; and (5) include flood insurance costs in the computation of the Allowable Expense Level (AEL) by permitting a one-time permanent adjustment to reflect this cost. The proposed rule would also make several clarifying and technical changes to the PFS regulations and would remove several obsolete provisions.

The most significant amendments made by this proposed rule to the current part 990 regulations are described in the following sections of this preamble. For the convenience of readers, this proposed rule republishes the text of subpart A of the part 990 regulations in its entirety. Except for the changes identified in this preamble, no additional revisions would be made to 24 CFR part 990.

IV. FHA-Based AEL (FHAEL) Adjustment for Small PHAs (§ 990.105(e))

The proposed rule would modify how non-utility Allowable Expense Levels (AELs) are calculated. AELs were initially set in 1975 for most PHAs and have subsequently been updated only for inflation. In 1992, PHAs with AELs that fell significantly below a statistical regression-based formula were allowed to receive increases up to 85% of the formula value. Many of those familiar with public housing have argued that the original AEL determinations had the effect of freezing into place whatever funding inequities then existed, and that the 1992 revisions did little to correct this problem because the formula was based on an analysis of the existing distribution of AELs. The most common concerns relate to small PHAs.

The Committee sought a proxy measure of the adequacy of small PHA funding; one not based upon public housing operating expense data since such data fails to provide an objective measure as to whether small PHA funding is adequate, inadequate, or excessive. The most readily accessible proxy information comes from HUD's Real Estate Management data system. This data system contains detailed time-series financial statements and project

characteristics for approximately 11,000 multifamily housing projects insured by the FHA and/or assisted by HUD, of which approximately 90% have some form of housing subsidies.

In reviewing applications for multifamily housing insurance, FHA requires that an applicant submit detailed budget estimates that demonstrate that the proposed project is financially feasible. Operating expense levels are normally required to be close to industry norms for similar projects in the area. This is done to reduce FHA's insurance risk—under-estimating operating expenses increases the risk that a project will go into default. Available data suggest that there is limited variability in normal operating expense levels for similar projects in similar locations.

The Committee adopted an approach that used a national FHA-based operating cost average (referred to as the ''FHAEL'') for a two-bedroom public housing unit based on line-item expenses for non-utility operating costs that excluded property taxes. This figure was then used to calculate a PHA-specific equivalent factor by adjusting for average unit size differences and for locational cost differences. The unit size differential was calculated using Fair Market Rent (FMR) cost relationships (*e.g.,* a one-bedroom costs 85% of a two-bedroom and a three-bedroom costs 125% of a two-bedroom). The location differential was based on the R.S. Means construction cost index, which effectively measures wage and material price differentials for a constant quality product. The R.S. Means and bedroom size adjustments had a high correlation with actual FHA operating expense differentials and a significant but lower unit-weighted correlation (83%) with PHA AELs.

The FHA operating cost data used in the comparisons of FHA and public housing operating costs consisted of all FHA multifamily insured or subsidized projects for which audited operating expense data for fiscal year (FY) 1996 were available. Data for 1996 were selected because they had been extensively tested and used for other purposes (*e.g.,* to develop operating cost standards and factors for FHA-managed properties). Comparisons with other years were made to eliminate projects which appeared to have atypical annual expenditures. A total of 8,651 projects were used for most analyses. Most of the projects for which all needed variables were available were assisted by some form of HUD subsidy.

In practice, it was found that the AEL/FHA cost ratio was 101% for the public housing program as a whole, but that many small PHAs had AELs significantly below estimated FHA-based operating cost averages. Conceptually, there is no reason to expect a PHA to be able to provide maintenance levels typical of private market projects with significantly less funding. Therefore, this proposed rule would establish a one-time adjustment to AELs for certain PHAs with less than 500 units.

AELs for small PHAs would be set at the higher of a small PHA's current AEL or 70% of the FHAEL, and the AEL would be increased to the higher of their current AEL or 85% of the FHAEL for PHAs under 250 units. The cost of these increases would be achieved by reducing the AELs of PHAs with more than 500 units. The proposed rule would provide an exception to this determination for small PHAs with AELs that are greater than 120% of the FHAEL, in which case the small PHAs will use an AEL equivalent to 120% of the FHAEL.

PHAs with more than 500 units and AELs in excess of 85% of their FHAEL will use 98.64% of the FY 2000 AEL (which represents a 1.36% reduction in the FY 2000 AEL value) for purposes of calculating their FY 2001 subsidy determinations. This reduction offsets the cost of establishing minimum AELs for PHAs with less than 250 units at 85% of the value of the FHAEL, and of establishing minimum AELs for PHAs with 250–499 units at 70% of their FHAEL values.

V. Treatment of Revenues (§§ 990.102, 990.109, 990.110, and 990.116)

A. Treatment of Non-Rental Income—Exclusion of Investment Income and Revised Definition of ''Other Income'' (§§ 990.102, 990.109 and 990.110)

As noted above, the amount of operating subsidy received by a PHA is generally calculated by determining the difference between projected expenses and projected income. Projected income is categorized as being either dwelling rental income, investment income, or ''other income.'' This proposed rule would revise the definition of other income (for purposes of calculating subsidy) to only include income from: (1) Rents billed for dwelling units rented for non-dwelling purposes; and (2) charges to residents for excess utility consumption of PHA supplied utilities.

Under the proposed definition, investment income would not be used to determine operating subsidy eligibility. Accordingly, the proposed rule would make a conforming amendment to § 990.109, which governs the calculation of projected operating income levels. Specifically, the proposed rule would remove paragraph (e)(1) of that section, which regards a PHA's estimate of investment income for purposes of the operating subsidy calculation. The proposed rule would also remove the provisions dealing with adjustments for investment income located at § 990.110(b). This regulatory change would codify HUD's revised policy regarding the treatment of non-rental income for FY 2000 and beyond, which was announced through an earlier issued Public and Indian Housing (PIH) Notice 2000–04 (HA), issued on February 3, 2000.

B. Computation of Projected Monthly Dwelling Rental Income (§ 990.109)

The proposed rule would amend § 990.109 to revise the method for calculating projected monthly dwelling rental income. Under the proposed rule, a PHA would determine its average monthly dwelling charge for the month that is six months before the start of its budget year (the ''current year average'') as well as the average monthly charge for the comparable month of its two previous years. An average would be computed for these three amounts (the ''three year average'') and compared with the current year average.

If the current year average is not higher than the three year average, rental income has not increased and the current year average will be used to calculate projected rental income.

If the current year average is higher than the three year average, the PHA shall be allowed to retain 50% of any increases in dwelling rental income, so long as the PHA uses the increased revenue for the provision of resident-related improvements and services as described in new § 990.116 (see Section V.C. of this preamble below). The retained income will not be recognized in the PHA's calculation under the Interim Operating Fund Formula. The projected dwelling rental income for PHAs with increased rental income will be based on the three year average plus 50% of the increase.

A change factor of 3% will then be applied. HUD intends to revise the 3% adjustment factor, for the duration of the interim rule, beginning in FY 2002, to more accurately reflect the inflationary pressure on the projection of monthly dwelling rental income. In determining such a factor for FY 2002, HUD will also take into consideration any negative impacts on incentives for PHAs to increase resident earned income, relevant and available indices of rental income inflation, historical trends in rental income changes, and the proportion and amount of increased

income retained by PHAs using the rolling base method. There will be consultation with the appropriate stakeholders regarding the methodology for determining change factors to be used by HUD followed by publication of written notice and an opportunity for public comment.

The PHA must adjust the rent rolls used for purposes of these calculations to reflect any change from PHA-paid utilities to resident-paid utilities, or vice versa, between the rent roll date and the projected budget year.

C. Use of Increases in Dwelling Rental Income (§ 990.116)

The proposed rule would replace the current § 990.116 (which concerns three year incentive adjustments) with a new section concerning the eligible uses of increases in dwelling rental income, as calculated under § 990.109 (see Section V.B. of this preamble above). The uses of the retained income must be described in the PHA's Plan submissions under 24 CFR part 903. The uses for the retained income must be developed with front end resident participation and ongoing input, and shall be made part of the PHA Plan submission. The proposed rule provides several examples of eligible uses for the retained income, including, but not limited to:

1. Physical and management improvements that benefit residents;
2. Resident self-sufficiency services;
3. Maintenance operations;
4. Resident employment and training services;
5. Resident safety and security improvements and services; and
6. Optional earned income exclusions.

VI. Utility Adjustments (§§ 990.107 and 990.110)

After consideration of various options for the treatment of utilities, the Committee decided to retain the current methodology for estimating utility expenses (located in § 990.107). However, the proposed rule would make several changes to the regulations concerning utility adjustments (located in § 990.110).

First, the proposed rule would eliminate the so-called ''year-end adjustments.'' Under the current PFS regulations, a PHA must conduct a comparison of the differences between the actual costs and consumption of utilities during the immediate preceding year with the estimates used to determine the allowable utilities expense level for that year. The comparison of actual and estimated utility costs is to be reported to HUD within 45 days after the end of a PHA's fiscal year. Under the proposed rule, a PHA will continue to report its comparison of actual and estimated utility costs within 45 days after the end of the PHA's fiscal year. The adjustment would normally be made in the operating subsidy calculation for the second PHA fiscal year following the year being adjusted. These adjustments would be applicable to PHA fiscal years beginning on or after January 1, 1999.

In order to strengthen the regulatory incentives to conserve energy, the current ''50–50'' sharing of additional costs or savings resulting from changes in consumption levels would be revised to a ''75–25'' split. Under the proposed rule, if actual consumption levels are lower than estimated, PHAs would retain 75% of the savings resulting from decreased consumption. The remaining 25% of the savings would be deducted by HUD when determining future subsidy eligibility. Conversely, if actual consumption levels are higher than anticipated, HUD would allow 25% of the resulting cost. The remaining 75% of the increased consumption cost would be absorbed by the PHA.

The risks associated with utility rates increasing after the estimate of utility costs has been approved will continue to be absorbed by HUD. In return, savings in utility costs due to decreases in rates that occur after the estimate of utility costs has been approved will accrue to HUD.

By permitting PHAs to retain a greater share of the savings from decreased utilities consumption, the Committee expects to encourage energy conservation. PHAs are urged to implement policies and procedures that foster conservation and to reduce energy costs. The savings resulting from such cost reductions can more appropriately be used to improve existing living conditions in public housing. The Committee strongly recommends that energy conservation become a central component of each PHA's Annual and Five Year Plans.

VII. Resident Participation (§ 990.108(e))

In its development of the proposed rule, the Committee discussed at substantial length the importance of resident participation to the success of public housing, including the Interim Operating Fund formula. The Committee noted that the Public Housing Reform Act places value on resident participation by requiring, with certain exceptions, at least one resident on the PHA Board of Commissioners, resident involvement in the PHA Plan process (through Resident Advisory Boards) and additional involvement as reflected in HUD's resident participation regulations (24 CFR part 964). Accordingly, the proposed rule would require each PHA to include, in its operating subsidy eligibility calculation, $25 per occupied unit per year for resident participation activities. These activities include (but are not limited to) those described in 24 CFR part 964. For purposes of this section, a unit may be occupied by a public housing resident, a PHA employee, or a police officer.

The proposed rule would also authorize HUD to approve the use of vacant rental units for resident participation purposes and allow PHAs to receive subsidy support for those units. HUD will approve the use of vacant units for such purposes only if the PHA can demonstrate that safe and suitable space for the resident participation activities is not otherwise readily available. Only one site per public housing development, involving one or more contiguous units, may be used for resident participation activities. Further, the number of units must be the minimum necessary to support the resident participation activities. Any rental income generated as a result of the activity must be reported as income in the operating subsidy calculation.

HUD is also taking various steps to promote resident involvement in creating and maintaining a positive living environment. For example, HUD is developing a proposed rule that will revise the part 964 regulations in their entirety. HUD is committed to developing this proposed rule with the active participation of public housing residents. HUD will solicit resident input through the scheduling of public forums, solicitations for written comments, and/or other appropriate means. HUD's goal in undertaking this rulemaking is to develop a set of easy-to-understand regulations that reflect the meaningful contributions of public housing residents. Accordingly, the proposed rule will not only implement statutory amendments made by the Public Housing Reform Act, but will also streamline and reorganize 24 CFR part 964 to simplify and improve the clarity of HUD's resident participation requirements.

HUD is taking several other steps to increase resident participation in public housing. For example, HUD will conduct training for resident organizations and PHAs on the Public Housing Reform Act.

VIII. Flood Insurance Adjustment to AEL (§ 990.105(f))

To simplify the calculation of operating subsidy, this proposed rule

would include flood insurance costs in the AEL computation. Specifically, the proposed rule would require that the AEL be adjusted by adding the flood insurance charge per unit month, as reflected in the last HUD approved subsidy calculation for FY 2000. This adjustment would be a one-time permanent adjustment made only in FY 2001. However, if the flood map is changed at a future date, HUD will adjust the AEL for the affected PHAs to reflect the revised flood insurance charges.

IX. Removal of Obsolete Provisions and Other Streamlining Changes

In addition to the changes discussed above, this proposed rule would make several clarifying and technical changes to part 990. For example, the proposed rule would replace all outdated reference to the PFS with references to the Interim Operating Fund Formula. The proposed rule would also remove several obsolete provisions, which continue to be unnecessarily codified. HUD has also taken this opportunity to re-format or clarify certain other provisions. These proposed changes are not substantive, and do not alter or modify existing requirements. Rather, these changes are designed to make the part 990 regulations easier to comprehend.

X. Treatment of Utility and Waste Management Savings

Amended section 9 of the 1937 Act requires that ''the treatment of utility and waste management costs under the [Operating Fund] formula shall provide that a public housing agency shall receive the full financial benefit from any reduction in the cost of utilities or waste management resulting from any contract with a third party to undertake energy conservation improvements in one or more of its public housing projects'' (42 U.S.C. 1437g(e)(2)(C)).

The proposed rule would address this statutory requirement by retaining the current PFS provisions at § 990.107(f), which describes PHA incentives for non-HUD financed energy conservation improvements. Under this provision, a PHA, whose energy conservation measures have been approved by HUD as satisfying certain regulatory requirements, may retain 100% of the savings from decreased energy consumption after payment of the amount due the contractor until the term of the financing agreement is completed.

With regard to waste management, these costs are treated as a maintenance expense (not a utilities expense) under the PFS and this proposed rule. The Allowable Expense Level (AEL) covers non-utility costs and is not adjusted when costs are reduced. Should a PHA be able to reduce its waste management costs below the amount assumed in its AEL, the PHA would retain all of the savings. This is true under the existing PFS, and would continue to apply under this proposed rule.

XI. Moving To Work PHAs

Moving To Work (MTW) PHAs will continue to be funded under the provisions of their existing MTW agreements. These agreements may be renegotiated in view of the new Interim Operating Fund Formula, as requested by MTW PHAs and as agreed to by HUD. If MTW PHAs choose to be included under the new Interim Operating Fund Formula, then both the redistribution and funding benefits will apply. (See § 990.104(d) of this proposed rule.)

XII. Applicability of the Interim Operating Fund Formula to Non-PFS PHAs

This proposed rule would revise § 990.103 (which concerns the applicability of the Interim Operating Fund Formula) to provide that the amendments described in sections IV. through X. of this preamble would be applicable to housing owned by the PHAs of the Virgin Islands, Puerto Rico, Guam and Alaska (the ''non-PFS PHAs''). Otherwise, the Interim Operating Fund Formula would not be applicable to these PHAs. Operating subsidy payments to these PHAs would continue to be made in accordance with subpart B of 24 CFR part 990. The non-PFS PHAs would not be subject to the AEL reductions necessary to offset the cost of establishing minimum AELs for small PHAs (see Section IV. of this preamble).

XIII. The Operating Fund Cost Study

The Conference Report to the FY 2000 HUD Appropriations Act (Public Law 106–74, approved October 20, 1999) states, in part, that ''. . . before a proposed rule is published in the **Federal Register**, the conferees direct HUD to contract with the Harvard University Graduate School of Design (''Harvard'') to conduct a study of the cost incurred in operating well-run public housing and provide the results to the negotiated rulemaking committee and the appropriate congressional committees. . . .'' (Congressional Record of October 13, 1999, H10007).

HUD has contracted for the study. HUD has also directed Harvard, as the cost-study contractor, to provide public opportunities (such as periodic forums, status reports, and other means) for interested persons and organizations to be informed of the study's research design, methodologies, and progress, and to provide input and feedback for consideration in the development of the study. Harvard, as the contractor for the cost study, will consult with interested individuals and organizations in developing the cost study findings and recommendations.

During the period that the cost study is underway, HUD will proceed to consider the public comments received on this proposed rule and to issue an interim rule based on this proposed rule and the public comments received on the proposed rule. As part of the rulemaking process, HUD will submit the rule to the Office of Management and Budget (OMB) for review and clearance (as required under Executive Order 12866), and to HUD's Congressional committees for 15-day pre-publication review (as required under section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*)).

XIV. Development of Final Rule

Following and based upon the findings and recommendations of the completed cost study and the Public Housing Reform Act, HUD will develop the additional rulemaking to finalize the Operating Fund Formula, using the procedures of the Negotiated Rulemaking Act of 1990, subject to compliance with applicable legal requirements prerequisite to the establishment of a negotiated rulemaking committee for such purposes and to the appropriate approvals of any proposed or final rule as referenced in Section XII of this preamble above.

XV. Justification for Reduced Public Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. The Department, however, is reducing its usual 60-day public comment period to 30 days for this proposed rule. In an effort to have an interim Operating Fund Formula in place as close to beginning of FY 2001, and given that the formula was developed through the negotiated rulemaking process, in which representatives of all affected parties participated, the Department believes that a 30-day public comment period is justified under these circumstances.

XVI. Findings and Certifications

Information Collection Requirements

The information collection requirements contained in 24 CFR part 990 have been approved by the Office of Management (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). While this proposed rule would make several modifications to the existing regulatory requirements (described above), the rule would not increase the total reporting and recordkeeping burden related to the payment of operating subsidies to PHAs. The information collection requirements contained in §§ 990.104, 990.105, 990.107, 990.108, 990.110, 990.111, and 990.117 of this proposed rule correspond to information collections contained in HUD's current part 990 regulations. These information collection requirements have been assigned OMB control numbers 2577–0029 (expiration date May 31, 2001), 2577–0026 (expiration date June 30, 2001), and 2577–0066 (expiration date September 30, 2002). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 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, SW, Washington, DC.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866 (captioned ''Regulatory Planning and Review'') and determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order. Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would implement a new system for formula allocation of funds to PHAs for their operating needs. The new system is established to provide minimum impact on all PHAs, small and large. Accordingly, the formula will not have a significant economic impact on any PHA. Notwithstanding HUD's determination that this proposed rule would not have a significant economic impact on small entities, HUD specifically invites comments regarding alternatives to this proposed rule that would meet HUD's objectives as described in this preamble.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this program is 14.850.

List of Subjects in 24 CFR Part 990

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 990 as follows:

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

1. Revise the heading of part 990 to read as set forth above.

2. The authority citation for part 990 is revised to read as follows:

Authority: 42 U.S.C. 1437g and 3535(d).

3. Subpart A is revised to read as follows:

Subpart A—The Operating Fund Formula

Sec.
990.101 Purpose.
990.102 Definitions.
990.103 Applicability of the Operating Fund Formula.
990.104 Determination of amount of operating subsidy under the Operating Fund Formula.
990.105 Computation of allowable expense level.
990.106 Transition funding for excessively high-cost PHAs.
990.107 Computation of utilities expense level.
990.108 Other costs.
990.109 Projected operating income level.
990.110 Adjustments.
990.111 Submission and approval of operating subsidy calculations and budgets.
990.112 Payments procedure for operating subsidy under the Operating Fund Formula.
990.113 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.
990.114 Phase-down of subsidy for units approved for demolition.
990.116 Increases in dwelling rental income.
990.117 Determining actual and requested budget year occupancy percentages.
990.120 Audits.
990.121 Effect of recission.

§ 990.101 Purpose.

This subpart implements section 9(f) of the United States Housing Act of 1937 (42 U.S.C. 1437g) (referred to as ''the 1937 Act''). Section 9(f) establishes an Operating Fund for the purposes of making assistance available to public housing agencies (PHAs) for the operation and management of public housing. The assistance made available from the Operating Fund is determined using a formula developed through negotiated rulemaking procedures. This subpart describes the policies and procedures for operating subsidy calculations under the Operating Fund Formula.

§ 990.102 Definitions.

Allowable Expense Level (AEL). The per unit per month dollar amount of

expenses (excluding Utilities and expenses allowed under § 990.108) computed in accordance with § 990.105, which is used to compute the amount of operating subsidy.

Allowable Utilities Consumption Level (AUCL). The amount of utilities expected to be consumed per unit per month by the PHA during the Requested Budget Year, which is equal to the average amount consumed per unit per month during the Rolling Base Period.

Base Year. The PHA's fiscal year immediately preceding its first fiscal year of receipt of operating subsidy under this part (either under the Operating Fund Formula or its predecessor, the Performance Funding System (PFS)).

Base Year Expense Level. The expense level (excluding utilities, audits and certain other items) for the Base Year, computed as provided in § 990.105.

Current Budget Year. The fiscal year in which the PHA is currently operating.

Dwelling rent. The amount charged monthly for a dwelling unit occupied by a resident or family eligible for public housing as determined in § 960.253 of this title. For purposes of determining subsidy eligibility, the dwelling rent will not reflect decreases resulting from the PHA's implementation of any optional earned income exclusions.

Formula. The revised formula derived from the actual expenses of the sample group of PHAs receiving assistance under the Operating Fund Formula, which is used to determine the Formula Expense Level and the Range of each PHA (see § 990.105(c)).

FHA-based operating expense level (FHAEL). The per unit per month dollar amount of expenses (excluding utilities and expenses allowed under § 990.108) computed in accordance with § 990.105(e), which is used on a one-time basis to adjust the AEL for selected PHAs.

Formula Expense Level. The per unit per month dollar amount of expenses (excluding utilities and audits) computed under the Formula, in accordance with § 990.105.

HUD Field Office. The HUD Field Office that has been delegated authority under the U.S. Housing Act of 1937 to perform functions pertaining to this subpart for the area in which the PHA is located.

Local Inflation Factor. The HUD-supplied weighted average percentage increase in local government wages and salaries for the area in which the PHA is located and non-wage expenses.

Long-term vacancy. This term means the same as it is used in the definition of ''Unit Months Available'' in this section.

Nondwelling rent. The amount charged monthly, including utility and equipment charges, to a lessee for a dwelling unit that is being used for nondwelling purposes. For purposes of determining operating subsidy:

(1) If the nondwelling unit has been approved for subsidy (e.g., the unit is being used for economic self-sufficiency services or anti-drug activities) at the rate of the PHA's AEL, the PHA will include all charges as nondwelling rent;

(2) If the nondwelling unit has not been approved for subsidy, a PHA will include as nondwelling rent only that portion of the charge that exceeds the rate of the PHA's AEL.

Operating budget. The PHA's operating budget and all related documents, as required by HUD, approved by the PHA Board of Commissioners.

Other income. Income from rent billed to lessees of dwelling units rented for nondwelling purposes, and from charges to residents for excess utility consumption for PHA supplied utilities.

Project. Each project under an Annual Contributions Contract to which the Operating Fund Formula is applicable, as provided in § 990.103.

Project Units. All dwelling units of a PHA's Projects.

Projected Operating Income Level. The per unit per month dollar amount of dwelling rental income plus other income, computed as provided in § 990.109.

Requested Budget Year. The budget year (fiscal year) of a PHA following the Current Budget Year.

Rolling Base Period. The 36-month period that ends 12 months before the beginning of the PHA Requested Budget Year, which is used to determine the Allowable Utilities Consumption Level used to compute the Utilities Expense Level.

Top of Range. Formula Expense Level multiplied by 1.15.

Transition funding. Funding for excessively high-cost PHAs, as provided in § 990.106.

Unit Approved for Deprogramming. (1) A dwelling unit for which HUD has approved the PHA's formal request to remove the dwelling unit from the PHA's inventory and the Annual Contributions Contract but for which removal, i.e., deprogramming, has not yet been completed; or

(2) A nondwelling structure or a dwelling unit used for nondwelling purposes which the PHA has determined will no longer be used for PHA purposes and which HUD has approved for removal from the PHA's inventory and Annual Contributions Contract.

Unit months available. Project Units multiplied by the number of months the Project Units are available for occupancy during a given PHA fiscal year. For purposes of this part, a unit is considered available for occupancy from the date established as the End of the Initial Operating Period for the Project until the time the unit is approved by HUD for deprogramming and is vacated or is approved for nondwelling use. In the case of a PHA development involving the acquisition of scattered site housing, see also § 990.104(b). A unit will be considered a long-term vacancy and will not be considered available for occupancy in any given PHA Requested Budget Year if the PHA determines that:

(1) The unit has been vacant for more than 12 months at the time the PHA determines its Actual Occupancy Percentage;

(2) The unit is not either:

(i) A vacant unit undergoing modernization; or

(ii) A unit vacant for circumstances and actions beyond the PHA's control, as these terms are defined in this section; and

(3) The PHA determines that it will have a vacancy percentage of more than 3% and will have more than five vacant units, for its Requested Budget Year, even after adjusting for vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the PHA's control, as defined in this section. (Reference in this part to ''more than five units'' or ''fewer than five units'' shall refer to a circumstance in which five units equals or exceeds 3% of the number of units to which the 3% threshold is applicable.)

Units vacant due to circumstances and actions beyond the PHA's control. Dwelling units that are vacant due to circumstances and actions that prohibit the PHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing vacant units and are beyond the PHA's control. For purposes of this definition, circumstances and actions beyond the PHA's control are limited to:

(1) Litigation. The effect of court litigation such as a court order or settlement agreement that is legally enforceable. An example would be units that are being held vacant as part of a court-ordered or HUD-approved desegregation plan.

(2) Laws. Federal or State laws of general applicability, or their implementing regulations. Units vacant

only because they do not meet minimum standards pertaining to construction or habitability under Federal, State, or local laws or regulations will not be considered vacant due to circumstances and actions beyond the PHA's control.

(3) Changing market conditions. For example, small PHAs that are located in areas experiencing population loss or economic dislocations may face a lack of demand in the foreseeable future, even after the PHA has taken aggressive marketing and outreach measures.

(4) Natural disasters.

(5) RMC Funding. The failure of a PHA to fund an otherwise approvable RMC request for Federal modernization funding.

(6) Casualty Losses. Delays in repairing damage to vacant units due to the time needed for settlement of insurance claims.

Utilities. Electricity, gas, heating fuel, water and sewerage service.

Utilities expense level. The per unit per month dollar amount of utilities expense, computed as provided in § 990.107.

Vacant unit undergoing modernization. A vacant unit in a project not considered to be obsolete (as determined using the indicia in § 970.6 of this chapter), when the project is undergoing modernization that includes work that is necessary to reoccupy the vacant unit, and in which one of the following conditions is met:

(1) The unit is under construction (.e., the construction contract has been awarded or force account work has started); or

(2) The treatment of the vacant unit is included in a HUD-approved modernization budget (or its successor under the public housing Capital Fund program), but the time period for placing the vacant unit under construction has not yet expired. The PHA must place the vacant unit under construction within two Federal Fiscal Years (FFYs) after the FFY in which the modernization funds are approved.

§ 990.103 Applicability of the Operating Fund Formula.

(a) *General.* The Operating Fund Formula will be used in determining the amounts of operating subsidy payable to PHAs.

(b) *Applicability of the Operating Fund Formula.* The Operating Fund Formula is applicable to all PHA rental units under Annual Contributions Contracts. The Operating Fund Formula applies to PHAs that have not received operating subsidy payments previously, but are eligible for such payments under the Operating Fund Formula.

(c) *Inapplicability of the Operating Fund Formula.* The Operating Fund Formula, as described in this part, is not applicable to Indian Housing, the Section 23 Leased Housing Program, the Section 23 Housing Assistance Payments Program, the Section 8 Housing Assistance Payments Program, the Mutual Help Program, or the Turnkey III or Turnkey IV Homeownership Opportunity Programs.

(d) *Applicability of the Operating Fund Formula to the PHAs of the Virgin Islands, Puerto Rico, Guam, and Alaska.* (1) The following provisions of this subpart A are applicable to housing owned by the PHAs of the Virgin Islands, Puerto Rico, Guam, and Alaska:

(i) The definition of ''other income'' at § 990.102;

(ii) Section 990.105 (Computation of allowable expense level). However, § 990.105(e) (Computation of FHA-based operating expense level for application in FY 2001) does not apply to these PHAs;

(iii) Section 990.105(f) (Flood insurance adjustment for FY 2001);

(iv) Section 990.108(e) (Funding for resident participation activities);

(v) Section 990.109(b) (Computation of projected average monthly dwelling rental income);

(vi) Section 990.110(b) (Adjustments to utilities expense level); and

(vii) Section 990.116 (Increases in dwelling rental income).

(2) With the exception of the provisions listed in paragraph (d)(1) of this section, the Operating Fund Formula is not applicable to the PHAs of the Virgin Islands, Puerto Rico, Guam and Alaska. Operating subsidy payments to these PHAs are made in accordance with subpart B of this part.

(e) *Financial management, monitoring and reporting.* The financial management system, monitoring and reporting on program performance and financial reporting will be in compliance with 24 CFR 85.20, 85.40 and 85.41 except to the extent that HUD requirements provide for additional specialized procedures which are determined by HUD to be necessary for the proper management of the program in accordance with the requirements of the U.S. Housing Act of 1937 and the Annual Contributions Contracts between the PHAs and HUD.

§ 990.104 Determination of amount of operating subsidy under the Operating Fund Formula.

(a) The amount of operating subsidy for which each PHA is eligible shall be determined as follows: The Projected Operating Income Level is subtracted from the total expense level (Allowable Expense Level plus Utilities Expense Level). These amounts are per unit per month dollar amounts, and must be multiplied by the Unit Months Available. Transition Funding, if applicable, and other costs as specified in § 990.108 are then added to this total in order to determine the total amount of operating subsidy for the Requested Budget Year, exclusive of consideration of the cost of an independent audit. As an independent operating subsidy eligibility factor, a PHA may receive operating subsidy in an amount, approved by HUD, equal to the actual cost of an independent audit to be prorated to operations of the PHA-owned rental housing. See § 990.110 regarding adjustments.

(b) In the case of a PHA development involving the acquisition of scattered site housing, the PHA may submit, and HUD shall review and approve, a revised Development Cost Budget (or its successor under the public housing Capital Fund program) reflecting the number of units that were occupied during the previous six months, and the Unit Months Available used in the calculation of operating subsidy eligibility shall be revised to include the number of months the new/acquired units are actually occupied.

(c) A special phase-down of subsidy to PHAs is applicable when demolition of units is approved by HUD. See § 990.114.

(d) The calculation of operating subsidy for a PHA in the Moving to Work demonstration program shall be made in accordance with the applicable Moving to Work Agreement, and any amendments to such agreements, as may be approved by HUD.

§ 990.105 Computation of allowable expense level.

The PHA shall compute its Allowable Expense Level using forms prescribed by HUD, as follows:

(a) *Computation of Base Year Expense Level.* The Base Year Expense Level includes Payments in Lieu of Taxes (PILOT) required by a Cooperation Agreement even if PILOT is not included in the Operating Budget for the Base Year because of a waiver of the requirements by the local taxing jurisdiction(s). The Base Year Expense Level includes all other operating expenditures as reflected in the PHA's Operating Budget for the Base Year except the following:

(1) Utilities expense;

(2) Cost of an independent audit;

(3) Adjustments applicable to budget years before the Base Year;

(4) Expenditures supported by supplemental subsidy payments

applicable to budget years before the Base Year;

(5) All other expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended; and

(6) Expenditures which were funded from a nonrecurring source of income.

(b) *Adjustment.* In compliance with the above six exclusions, the PHA shall adjust the AEL by excluding any of these items from the Base Year Expense Level if this has not already been accomplished. If such adjustment is made in the second or some subsequent fiscal year of receipt of operating subsidy under this part, the AEL shall be adjusted in the year in which the adjustment is made, but the adjustment shall not be applied retroactively. If the PHA does not make these adjustments, the HUD Field Office shall compute the adjustments.

(c) *Computation of Formula Expense Level.* The PHA shall compute its Formula Expense Level in accordance with a HUD-prescribed formula that estimates the cost of operating an average unit in a particular PHA's inventory. It uses weights and a Local Inflation Factor assigned each year to derive a Formula Expense Level for the current year and the requested budget year. The formula is the sum of the following six numbers and the weights of the formula and the formula are subject to updating by HUD:

(1) The number of pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community multiplied by a weight of 7.954. This census-based statistic applies to the county of the PHA, except that, if the PHA has 80% or more of its units in an incorporated city of more than 10,000 persons, it uses city-specific data. County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

(2) The Local Government Wage Rate multiplied by a weight of 116.496. The wage rate used is a figure determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted PHA standard of 1.0. For multi-county PHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85% or more than 115% of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85% or more than 115% of the wage index of private employment determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Construction Cost Index.

(3) The lesser of the current number of the PHA's two or more bedroom units available for occupancy, or 15,000 units, multiplied by a weight of .002896.

(4) The current ratio of the number of the PHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the PHA's units available for occupancy multiplied by a weight of 37.294. For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy and averaging 35 or more units available for occupancy per building and containing at least one building with units available for occupancy that is 5 or more stories high.

(5) The current ratio of the number of the PHA's three or more bedroom units available for occupancy to the number of all the PHA's units available for occupancy multiplied by a weight of 22.303.

(6) An equation calibration constant of −.2344.

(d) *Computation of Allowable Expense Level (AEL).* The PHA shall compute its Allowable Expense Level as follows:

(1) *AEL for first budget year of operating subsidy under this part where Base Year Expense Level does not exceed the top of the range.* Every PHA whose Base Year Expense Level is less than the top of the range shall compute its AEL for the first budget year of operating subsidy under this part by adding the following to its Base Year Expense Level (before adjustments under § 990.110):

(i) Any increase approved by HUD in accordance with § 990.110;

(ii) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year of operating subsidy under this part; and

(iii) The sum of the Base Year Expense Level, and any amounts described in paragraphs (d)(1) (i) and (ii) of this section multiplied by the Local Inflation Factor.

(2) *AEL for first budget year of operating subsidy under this part where Base Year Expense Level exceeds the top of the range.* Every PHA whose Base Year Expense Level exceeds the top of the range shall compute its AEL for the first budget year of operating subsidy under this part by adding the following to the top of the range (not to its Base Year Expense Level, as in paragraph (d)(1) of this section):

(i) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year of operating subsidy under this part;

(ii) The sum of the figure equal to the top of the range and the increase (decrease) described in paragraph (d)(2)(i) of this section, multiplied by the Local Inflation Factor. (If the Base Year Expense Level is above the AEL, computed as provided above, the PHA may be eligible for Transition Funding under § 990.106.)

(3) *AEL for first budget year of operating subsidy under this part for a new project.* A new project of a new PHA or a new project of an existing PHA that the PHA decides to place under a separate ACC, which did not have a sufficient number of units available for occupancy in the Base Year to have a level of operations representative of a full fiscal year of operation is considered to be a ''new project.'' The AEL for the first budget year of operating subsidy under this part for a ''new project'' will be based on the AEL for a comparable project, as determined by the HUD Field Office. The PHA may suggest a project or projects it believes to be comparable. In determining what constitutes a ''new project'' under this paragraph, HUD will be guided by its public housing development regulations at 24 CFR part 941.

(4) *Adjustment of AEL for budget years after the first budget year of operating subsidy under this part.* HUD may adjust the AEL of budget years after the first year of operating subsidy under this part, in accordance with the provisions of § 990.105(b) or § 990.108(c).

(5) *Allowable Expense Level for budget years after the first budget year of operating subsidy under this part.* For each budget year after the first budget year of operating subsidy under this part, the AEL shall be computed as follows:

(i) The AEL shall be increased by any increase to the AEL approved by HUD under § 990.108(c).

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5%); and

(B) If the PHA has experienced a change in the number of units in excess of 5% or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph, it shall use the increase (decrease) between the Formula Expense Level calculated using the PHA's characteristics that applied to the Requested Year when the last adjustment to the AEL was made based

on this paragraph and the Formula Expense Level calculated using the PHA's characteristics for the Requested Budget Year.

(iii) The amount computed in accordance with paragraphs (d)(5)(i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

(6) *Adjustment of AEL for budget years after the first budget year of operating subsidy under this part.* HUD may adjust the AEL of budget years after the first year of operating subsidy under this part, in accordance with the provisions of § 990.105(b) or § 990.108(c).

(e) *Computation of FHA-based operating expense level (FHAEL) for application in FY 2001.* (1) *HUD calculation of FHAEL.* For every PHA that is eligible to receive operating subsidy under the Operating Fund Formula, HUD will calculate an FHAEL (based upon FY 2000 data and for application in FY 2001) as follows:

(i) *Step 1: Calculation of average national operating cost.* HUD will calculate an FHA-based national average cost of operating a two-bedroom public housing unit, exclusive of utility costs and property taxes. The average national cost will be calculated using privately managed (FHA multifamily insured and/or assisted) rental housing financial data available to HUD for the most recent year of full reporting and adjusted to reflect a two-bedroom size by using Section 8 Fair Market Rent (FMR) relationships (i.e., increase or decrease the national average cost depending on whether the average cost-weighted bedroom size is greater or less than 2.0 bedrooms per unit). (See 24 CFR part 888 for additional information regarding FMRs.)

(ii) *Step 2: Adjustment of average national two-bedroom operating cost for local cost differences.* HUD will adjust the average national two-bedroom operating cost for local cost differences using the location adjustment factors provided in the R.S. Means Residential Construction Costs Index.

(iii) *Step 3: Adjustment of average national operating cost for PHA-specific bedroom-size distribution.* For each PHA, HUD will further adjust the average national operating cost for the bedroom size distribution of the PHA using Section 8 FMR cost relationships (i.e., increase or decrease the average national cost depending on whether the average cost-weighted bedroom size for the PHA's inventory is greater or less than 2.0 bedrooms per unit).

(iv) *Step 4: Update of PHA-specific average operating cost to reflect FY 2000 costs.* HUD will update this PHA-specific operating cost to reflect increased FY 2000 operating costs by using the Public Housing AEL inflation factor.

(2) *Availability of FHAEL to PHA.* HUD will make the following information available to each PHA:

(i) *FHAEL.* The FHAEL for the PHA;

(ii) *PHA bedroom distribution.* The PHA bedroom distribution used to make the PHA-specific bedroom adjustment under paragraph (e)(1)(iii) of this section; and

(iii) *Base average national cost.* The two-bedroom base average national cost calculated under paragraph (e)(1)(i) of this section.

(3) *Use of FHAEL for FY 2000 for PHAs with less than 500 units under contract.* Each PHA with less than 500 units shall review the FHAEL and bedroom distribution provided by HUD, and do the following:

(i) *The PHA will determine if the bedroom size distribution used by HUD was appropriate.* (A) *Mandatory recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by more than .02 from the weighted average used by HUD, the PHA shall recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(B) *Discretionary recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by less than .02 from the weighted average used by HUD, the PHA may recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(ii) *Comparison of FHAEL to AEL.* The PHA shall compare its FHAEL with its approved FY 2000 AEL.

(iii) *If the PHA has less than 250 units.* PHAs with less than 250 units shall use the higher of their current AEL or 85% of the FHAEL. However, in no case will the PHA use an amount that exceeds 120% of its FHAEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula (see paragraph (e)(3)(v) of this section).

(iv) *If the PHA has 250–499 units.* PHAs with 250–499 units shall use the higher of their current AEL, or 70% of FHAEL. However, in no case will the PHA use an amount that exceeds 120% of its FHAEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula (see paragraph (e)(3)(v) of this section).

(v) *If the PHA with less than 500 units has an AEL greater than 120% of its FHAEL.* If a PHA with less than 500 units has an FY 2000 AEL that is greater than 120% of its FHAEL, the PHA shall use 120% of its FHAEL in place of its actual FY 2000 AEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula.

(4) *Use of FHAEL for FY 2000 for PHAs with more than 500 units under contract.* Each PHA with more than 500 units shall review the FHAEL and bedroom distribution provided by HUD and do the following:

(i) *The PHA shall determine if the bedroom size distribution used by HUD was appropriate.* (A) *Mandatory recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by more than .02 from the weighted average used by HUD, the PHA shall recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(B) *Discretionary recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by less than .02 from the weighted average used by HUD, the PHA may recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(ii) *Comparison of FHAEL to AEL.* The PHA shall compare its FHAEL with its approved FY 2000 AEL.

(iii) *If the PHA's FY 2000 AEL is less than or equal to 85% of its FHAEL.* If the PHA's FY 2000 AEL is less than or equal to 85% of its FHAEL, the PHA shall use its FY 2000 AEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula.

(iv) *If the PHA's FY 2000 AEL is greater than 85% of its FHAEL.* If the PHA's FY 2000 AEL is greater than 85% of its FHAEL, the PHA shall use 98.64% of its FY 2000 AEL for purposes of calculating its FY 2001 subsidy determinations under the Operating Fund Formula.

(v) *Inapplicability of AEL reduction to certain PHAs.* The AEL reduction described in paragraph (e)(4)(iv) of this section does not apply to the PHAs of the Virgin Islands, Puerto Rico, Guam and Alaska. These PHAs will use their FY 2000 AELs for purposes of FY 2001 subsidy determinations, regardless of whether the PHA's AEL is greater than 85% of its FHAEL.

(vi) *Cap on AEL value reduction.* In no instance shall a PHA subject to an AEL reduction, reduce the FY 2000 AEL value used in calculating its FY 2001 AEL for purposes of operating subsidy determinations to a value less than 85% of its FHAEL.

(f) *Flood insurance adjustment for FY 2001.* To simplify the calculation of

operating subsidy, the AEL computation for the PHA's fiscal year beginning in 2001 will include an additional step following the determination made in accordance with paragraphs (a) through (e) of this section: the AEL per unit month derived in accordance with those paragraphs is to be adjusted by adding the flood insurance charge per unit month, as reflected in the last HUD approved subsidy calculation for FY 2000. This adjustment is a one-time permanent adjustment made only in FY 2001. However, if the flood map is revised at a future date, HUD will adjust the AEL for the affected PHAs in accordance with this paragraph.

§ 990.106 Transition funding for excessively high-cost PHAs.

(1) *Eligibility.* If a PHA's Base Year Expense Level exceeds its AEL for any budget year under the Operating Fund Formula, the PHA may be eligible for Transition Funding.

(2) *Amounts.* Transition Funding shall be an amount not to exceed the difference between the Base Year Expense Level and the AEL for the Requested Budget Year, multiplied by the number of Unit Months Available.

(3) *Reduction in transition funding.* HUD shall have the right to discontinue payment of all or part of the Transition Funding in the event HUD at any time determines that the PHA has not achieved a satisfactory level of management efficiency, or is not making efforts satisfactory to HUD to improve its management performance.

§ 990.107 Computation of utilities expense level.

(a) *Computation of the utilities expense level.* The PHA's Utilities Expense Level for the requested Budget Year shall be computed by multiplying the Allowable Utilities Consumption Level (AUCL) per unit per month for each utility, determined as provided in paragraph (c) of this section, by the projected utility rate determined as provided in paragraph (b) of this section.

(b) *Utilities rates.* (1) The current applicable rates, with consideration of adjustments and pass-throughs, in effect at the time the Operating Budget is submitted to HUD will be used as the utilities rates for the Requested Budget Year, except that, when the appropriate utility commission has, prior to the date of submission of the Operating Budget to HUD, approved and published rate changes to be applicable during the Requested Budget Year, the future approved rates may be used as the utilities rates for the entire Requested Budget Year.

(2) If a PHA takes action, such as wellhead purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings to reduce the rate it pays for utilities (including water, fuel oil, electricity, and gas), then the PHA will be permitted to retain one-half of the cost savings during the first 12 months attributable to its actions. Upon determination that the action was cost-effective in the first year, the PHA may be permitted to retain one-half the annual cost savings, if the actions continue to be cost-effective. See also paragraph (e) of this section and § 990.110(b).

(c) *Computation of Allowable Utilities Consumption Level.* The Allowable Utilities Consumption Level used to compute the Utilities Expense Level of PHAs for the Requested Budget Year generally will be based on the availability of consumption data. For project utilities where consumption data are available for the entire Rolling Base Period, the computation will be in accordance with paragraph (c)(1) of this section. Where data are not available for the entire period, the computation will be in accordance with paragraph (c)(2) of this section, unless the project is a new project, in which case the computation will be in accordance with paragraph (c)(3) of this section. For a project where the PHA has taken special energy conservation measures that qualify for special treatment in accordance with paragraph (f)(1) of this section, the computation of the Allowable Utilities Consumption Level may be made in accordance with paragraph (c)(4) of this section. The AUCL for all of a PHA's projects is the sum of the amounts determined using all of these subparagraphs, as appropriate.

(1) *Rolling Base Period System.* (i) For project utilities with consumption data for the entire Rolling Base Period, the AUCL is the average amount consumed per unit per month during the Rolling Base Period adjusted in accordance with paragraph (d) of this section. The PHA shall determine the average amount of each of the utilities consumed during the Rolling Base period (i.e., the 36-month period ending 12 months prior to the first day of the Requested Budget Year).

(ii) An example of a rolling base is as follows:

PHA Fiscal Year (affected fiscal year)		Rolling base period	
Beginning	Ending	Begins	Ends
1–1–01	12–31–01 (1st year)	1–1–97	12–31–99
1–1–02	12–31–02 (2nd year)	1–1–98	12–31–00

(2) *Alternative method where data is not available for the entire Rolling Base Period.* (i) If the PHA has not maintained or cannot recapture consumption data regarding a particular utility from its records for the whole Rolling Base Period mentioned in paragraph (c)(1) of this section, it shall submit consumption data for that utility for the last 24 months of its Rolling Base Period to the HUD Field Office for approval. If this is not possible, it shall submit consumption data for the last 12 months of its Rolling Base Period. The PHA also shall submit a written explanation of the reasons that data for the whole Rolling Base Period is unavailable.

(ii) In those cases where a PHA has not maintained or cannot recapture consumption data for a utility for the entire Rolling Base Period, comparable consumption for the greatest of either 36, 24, or 12 months, as needed, shall be used for the utility for which the data is lacking. The comparable consumption shall be estimated based upon the consumption experienced during the Rolling Base Period of comparable project(s) with comparable utility delivery systems and occupancy. The use of actual and comparable consumption by each PHA, other than those PHAs defined as New Projects in paragraph (c)(3) of this section, will be determined by the availability of complete data for the entire 36-month Rolling Base Period. Appropriate utility consumption records, satisfactory to HUD, shall be developed and maintained by all PHAs so that a 36-month rolling average utility consumption per unit per month under paragraph (c)(1) of this section can be determined.

(iii) If a PHA cannot develop the consumption data for the Rolling Base Period or for 12 or 24 months of the

Rolling Base Period, either from its own project(s) data, or by using comparable consumption data the actual per unit per month (PUM) utility expenses stated in paragraph (d) of this section shall be used as the Utilities Expense Level.

(3) *Computation of Allowable Utilities Consumption Levels for New Projects.* (i) A New Project, for the purpose of establishing the Rolling Base Period and the Utilities Expense Level, is defined as either:

(A) A project which had not been in operation during at least 12 months of the Rolling Base Period, or a project which enters management after the Rolling Base Period and prior to the end of the Requested Budget Year; or

(B) A project which during or after the Rolling Base Period, has experienced conversion from one energy source to another; interruptable service; deprogrammed units; a switch from resident-purchased to PHA-supplied utilities; or a switch from PHA-supplied to resident-purchased utilities.

(ii) The actual consumption for New Projects shall be determined so as not to distort the Rolling Base Period in accordance with a method prescribed by HUD.

(4) *Freezing the Allowable Utilities Consumption Level.* (i) Notwithstanding the provisions of paragraphs (c)(1) and (c)(2) of this section, if a PHA undertakes energy conservation measures that are approved by HUD under paragraph (f) of this section, the Allowable Utilities Consumption Level for the project and the utilities involved may be frozen during the contract period. Before the AUCL is frozen, it must be adjusted to reflect any energy savings resulting from the use of any HUD funding. The AUCL is then frozen at the level calculated for the year during which the conservation measures initially will be implemented, as determined in accordance with paragraph (f) of this section.

(ii) If the AUCL is frozen during the contract period, the annual three-year rolling base procedures for computing the AUCL shall be reactivated after the PHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the AUCL after the end of the contract period will be as follows:

(A) *First year:* The energy consumption during the year before the year in which the contract ended and the energy consumption for each of the two years before installation of the energy conservation improvements;

(B) *Second year:* The energy consumption during the year the contract ended, energy consumption during the year before the contract ended, and energy consumption during the year before installation of the energy conservation improvements;

(C) *Third year:* The energy consumption during the year after the contract ended, energy consumption during the year the contract ended, and energy consumption during the year before the contract ended.

(d) *Utilities expense level where consumption data for the full Rolling Base Period is unavailable.* If a PHA does not obtain the consumption data for the entire Rolling Base Period, or for 12 or 24 months of the Rolling Base Period, either for its own project(s) or by using comparable consumption data as required in paragraph (c)(2) of this section, it shall request HUD Field Office approval to use actual PUM utility expenses. These expenses shall exclude Utilities Labor and Other Utilities Expenses. The actual PUM utility expenses shall be taken from the year-end Statement of Operating Receipts and Expenditures, Form HUD–52599, (Office of Management and Budget approval number 2577–0067) prepared for the PHA fiscal year which ended 12 months prior to the beginning of the PHA Requested Budget Year (e.g., for a PHA fiscal year beginning January 1, 2001, the PHA would use data from the fiscal year ended December 31, 1999). Subsequent adjustments will not be approved for a budget year for which the utility expense level is established based upon actual PUM utility expenses.

(e) *Adjustments.* PHAs shall request adjustments of Utilities Expense Levels in accordance with § 990.110(b), which requires an adjustment based upon a comparison between actual experience and estimates of consumption and of utility rates.

(f) *Incentives for energy conservation improvements.* If a PHA undertakes energy conservation measures (including those covering water, fuel oil, electricity, and gas) that are financed by an entity other than the Secretary, such as physical improvements financed by a loan from a utility or governmental entity, management of costs under a performance contract, or a shared savings agreement with a private energy service company, the PHA may qualify for one of the two possible incentives under this part. For a PHA to qualify for these incentives, HUD approval must be obtained. Approval will be based upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings, and the contract period does not exceed 12 years.

(1) If the contract allows the PHA's payments to be dependent on the cost savings it realizes, the PHA must use at least 50% of the cost savings to pay the contractor. With this type of contract, the PHA may take advantage of a frozen AUCL under paragraph (c)(4) of this section, and it may use the full amount of the cost savings, as described in § 990.110(b)(2)(ii).

(2) If the contract does not allow the PHA's payments to be dependent on the cost savings it realizes, then the AUCL will continue to be calculated in accordance with paragraphs (c)(1) through (c)(3) of this section, as appropriate; the PHA will be able to retain part of the cost savings, in accordance with § 990.110(b)(2)(i); and the PHA will qualify for additional operating subsidy eligibility (above the amount based on the allowable expense level) to cover the cost of amortizing the cost of the energy conservation measures during the term of the contract, in accordance with § 990.110(c).

§ 990.108 Other costs.

(a) *Cost of independent audits.* (1) Eligibility to receive operating subsidy for independent audits is considered separately from the Operating Fund Formula. However, the PHA shall not request, nor will HUD approve, an operating subsidy for the cost of an independent audit if the audit has already been funded by subsidy in a prior year.

(2) A PHA that is required by the Single Audit Act (31 U.S.C. 7501–7507) (see 24 CFR part 85) to conduct a regular independent audit may receive operating subsidy to cover the cost of the audit. The actual cost of an independent audit, applicable to the operations of PHA-owned rental housing, is not included in the Allowable Expense Level, but it is allowed in full in computing the amount of operating subsidy under § 990.104, above.

(3) A PHA that is exempt from the audit requirements under the Single Audit Act (24 CFR part 85) may receive operating subsidy to offset the actual cost of an independent audit chargeable to operations (after the End of the Initial Operating Period) if the PHA chooses to have an audit.

(b)(1) Costs attributable to units that are approved for deprogramming and vacant may be eligible for inclusion, but must be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because the units are utilized for PHA-related activities are not eligible for inclusion.

In determining operating subsidy calculations under the Operating Fund Formula, these units shall not be included in the calculation of Unit Months Available. Units approved for deprogramming shall be listed by the PHA, and supporting documentation regarding direct costs attributable to such units shall be included as a part of the Operating Fund Formula calculation in which the PHA requests operating subsidy for these units. If the PHA requires assistance in this matter, the PHA should contact the HUD Field Office.

(2) Units approved for nondwelling use to promote economic self-sufficiency services and anti-drug activities are eligible for operating subsidy under the conditions provided in this paragraph (b)(2), and the costs attributable to these units are to be included in the operating budget. If a unit satisfies the conditions stated below, it will be eligible for subsidy at the rate of the AEL for the number of months the unit is devoted to such use. Approval will be given for a period of no more than 3 years. HUD may renew the approval to allow payments after that period only if the PHA can demonstrate that no other sources for paying the non-utility operating costs of the unit are available. The conditions the unit must satisfy are:

(i) The unit must be used for either economic self-sufficiency activities directly related to maximizing the number of employed residents or for anti-drug programs directly related to ridding the development of illegal drugs and drug-related crime. The activities must be directed toward and for the benefit of residents of the development.

(ii) The PHA must demonstrate that space for the service or program is not available elsewhere in the locality and that the space used is safe and suitable for its intended use or that the resources are committed to make the space safe and suitable.

(iii) The PHA must demonstrate satisfactorily that other funding is not available to pay for the non-utility operating costs. All rental income generated as a result of the activity must be reported as income in the operating subsidy calculation.

(iv) Operating subsidy may be approved for only one site (involving one or more contiguous units) per public housing development for economic self-sufficiency services or anti-drug programs, and the number of units involved should be the minimum necessary to support the service or program. Operating subsidy for any additional sites per development can only be approved by HUD Headquarters.

(v) The PHA must submit a certification with its Operating Fund Formula Calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation. The PHA must maintain specific documentation of the units covered. Such documentation should include a listing of the units, the street addresses, and project/management control numbers.

(3) Long-term vacant units that are not included in the calculation of Unit Months Available are eligible for operating subsidy in the Requested Budget Year at the rate of 20% of the AEL. Allowable utility costs for long term vacant units will continue to be funded in accordance with § 990.107.

(c) *Costs attributable to changes in Federal law or regulation.* In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulation has caused or will cause a significant increase in expenditures of a continuing nature above the Allowable Expense Level and Utilities Expense Level, HUD may in HUD's sole discretion decide to prescribe a procedure under which the PHA may apply for or may receive an increase in operating subsidy.

(d)(1) *Costs resulting from combination of two or more units.* When a PHA redesigns or rehabilitates a project and combines two or more units into one larger unit and the combination of units results in a unit that houses at least the same number of people as were previously served, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year. The number of people served in a unit will be based on the formula ((2 x No. of Bedrooms) minus 1), which yields the average number of people that would be served. An efficiency unit will be counted as a one bedroom unit for purposes of this calculation.

(2) An exception to paragraph (d)(1) of this section is made when a PHA combines two efficiency units into a one-bedroom unit. In these cases, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year.

(e) *Funding for resident participation activities*—(1) *Funding amount.* Each PHA shall include in the operating subsidy eligibility calculation, $25 per occupied unit per year for resident participation activities, including (but not limited to) those described in part 964 of this title. For purposes of this section, a unit may be occupied by a public housing resident, a PHA employee, or a police officer. If, in any fiscal year, appropriations are not sufficient to meet all funding requirements under this part, then the $25 will be subject to pro-ration.

(2) *Use of vacant rental units.* If there is no community or rental space available for providing resident participation activities, HUD may approve, at the request of the PHA, the use of one or more vacant rental units for resident participation purposes. A unit that satisfies the following conditions will be eligible for operating subsidy at the rate of the AEL for the number of months the unit is devoted to such use:

(i) The PHA must demonstrate that safe and suitable space for the resident participation activities is not otherwise readily available;

(ii) One or more contiguous units may be used for resident participation activities. However, the units must be located on a single site per public housing development. Further, the number of units involved must be the minimum necessary to support the resident participation activities;

(iii) The PHA must submit a certification with its Operating Fund Formula calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation; and

(iv) The PHA must maintain specific documentation of the units covered. Such documentation must include a listing of the units, the street addresses, and project/management control numbers.

§ 990.109 Projected operating income level.

(a) *Policy.* The Operating Fund Formula determines the amount of operating subsidy for a particular PHA based in part upon a projection of the actual dwelling rental income and other income for the particular PHA. The projection of dwelling rental income is obtained by computing the average monthly dwelling rental charge per unit for the PHA, and applying an upward trend factor (subject to updating). This amount is then multiplied by the Projected Occupancy Percentage for the Requested Budget Year. There are special provisions for projection of dwelling rental income for new projects.

(b) *Computation of projected average monthly dwelling rental income*—(1) *General*. The projected average monthly dwelling rental income per unit for the PHA is calculated as follows:

(i) *Step 1: Calculation of the current year and three year averages*. The PHA calculates:

(A) The average monthly dwelling rental charge per unit for the current budget year (the ''current year average'' calculated in accordance with paragraph (b)(2) of this section); and

(B) The average monthly dwelling rental charge per unit for the current budget year and the immediate past two budget years (the ''three year average'' calculated in accordance with paragraph (b)(3) of this section).

(ii) *Step 2: Adjustment for any increase in dwelling rental income*. If the current year average is greater than the three year average, the PHA has increased dwelling rental income. If a PHA has increased dwelling rental income, it shall perform the following calculation. The PHA shall:

(A) Subtract the three year average from the current year average;

(B) Divide the result by 2; and

(C) Add this sum to the three year average.

(iii) *Step 3: Calculating the amount of increased rental revenue that may be retained*. PHAs shall be allowed to retain 50% of any increases in dwelling rental income, so long as the PHA uses the increased revenue for the provision of resident-related improvements and services as described in § 990.116. The retained income will not be recognized in the PHA's calculation under the Operating Fund Formula. The annual amount of increased revenue retained by the PHA is calculated by subtracting the three year average from the current year average and multiplying the result by the projected occupancy percentage (see § 990.109(b)(6)), and the unit months available (see § 990.102).

(iv) *Step 4: Applying the rental income adjustment factor*. The lower of the amount calculated under paragraph (b)(i)(A) or (b)(ii) of this section is then adjusted by the dwelling rental income adjustment factor described in paragraph (b)(5) of this section.

(2) *Average monthly dwelling rental charge per unit*. (i) The average monthly dwelling rental charge per unit shall be computed using the total dwelling rental charges for all Project Units, as shown on the Tenant Rent Rolls which the PHA is required to maintain, for the first day of the month which is six months before the first day of the Requested Budget Year. However, if a change in the total of the Rent Rolls has occurred in a subsequent month which is before the beginning of the Requested Budget Year, and before the submission of the Requested Budget Year calculation of operating subsidy eligibility, the PHA may use the latest changed Rent Roll for the purpose of the computation.

(ii) This aggregate dollar amount shall be divided by the number of occupied dwelling units as of the same date.

(iii) The Rent Roll used for calculating the projected operating income level will not reflect decreases resulting from the PHA's implementation of an optional earned income exclusion authorized by the explanation of ''annual income'' in 24 CFR 5.609.

(3) *Three year average monthly dwelling rental charge per unit*. The three year average monthly dwelling rental charge shall be computed by averaging the amounts calculated under paragraph (b)(2) of this section for the current budget year and the immediate past two budget years.

(4) *Changes in supply of utilities*. The PHA must adjust the rent rolls used for purposes of the calculations described in paragraphs (b)(2) and (b)(3) of this section to reflect any change from PHA-paid utilities to resident-paid utilities, or vice versa, between the rent roll date and the projected budget year.

(5) *Dwelling rental income adjustment factor*. An adjustment factor will be applied to the calculations described in paragraphs (b)(2) and (b)(3) of this section. In FY 2001, the inflation factor will be 3%. In subsequent years, the average monthly dwelling rental charge per unit will be increased for inflation using a HUD supplied adjustment factor for the requested budget year to obtain the projected average monthly dwelling rental charge per unit of the PHA for the Requested Budget Year.

(6) *Projected occupancy percentage*. The PHA shall determine its projected percentage of occupancy for all Project Units (Projected Occupancy Percentage), as follows:

(i) *General*. Using actual occupancy data collected before the start of the budget year as a beginning point, the PHA will develop estimates for its Requested Budget Year (RBY) of: how many units the PHA will have available for occupancy; how many of the available units will be occupied and how many will be vacant, and what the average occupancy percentage will be for the RBY. The conditions under which the RBY occupancy percentage will be used as the projected occupancy percentage for purposes of determining operating subsidy eligibility are described below.

(ii) *High Occupancy PHA—No adjustments necessary*. If the PHA's RBY Occupancy Percentage, calculated in accordance with § 990.117, is equal to or greater than 97%, the PHA's Projected Occupancy Percentage is 97%. If the PHA's RBY Occupancy Percentage is less than 97%, but the PHA demonstrates that it will have an average of five or fewer vacant units in the requested budget year, the PHA will use its RBY Occupancy Percentage as its projected occupancy percentage.

(iii) *Adjustments in determining occupancy*. If the PHA's RBY Occupancy Percentage is less than 97% and the PHA has more than 5 vacant units, the PHA will adjust its estimate of vacant units to exclude vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control. After making this adjustment, the PHA will recalculate its estimated vacancy percentage for the RBY.

(A) *High Occupancy PHA after adjustment*. If the recalculated vacancy percentage is 3% or less (or the PHA would have five or fewer vacant units), the PHA will use its RBY Occupancy Percentage as its projected occupancy percentage.

(B) *Low Occupancy PHA—adjustment for long-term vacancies*. If the recalculated vacancy percentage is greater than 3% (or the PHA would have more than 5 vacant units), the PHA will then further adjust its RBY Occupancy Percentage by excluding from its calculation of Unit Months Available (UMAs), those unit months attributable to units that have been vacant for longer than 12 months that are not vacant units undergoing modernization or are not units vacant due to circumstances and actions beyond the PHA's control.

(iv) *Low Occupancy PHA after all adjustments*. A PHA that has determined its RBY Occupancy Percentage in accordance with paragraph (b)(6)(iii)(B) of this section will be eligible for operating subsidy as follows:

(A) Long-term vacancies removed from the calculation of UMAs will be eligible to receive a reduced operating subsidy calculated at 20% of the PHA's AEL.

(B) If the recalculated RBY Occupancy Percentage is 97% or higher, the PHA will use 97%.

(C) If the recalculated RBY Occupancy Percentage is less than 97%, but the vacancy rate after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control is 3% or less (or the PHA has five or fewer vacant units), the PHA may use its recalculated RBY

Occupancy Percentage as its projected occupancy percentage.

(D) If the recalculated RBY Occupancy Percentage is less than 97% and the vacancy percentage is greater than 3% (or the PHA has more than five vacant units) after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control, the PHA will use 97% as its projected occupancy percentage, but will be allowed to adjust the 97% by the number of vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control. For a small PHA using five vacant units as its occupancy objective for the RBY, the PHA will determine what percentage five units represents as a portion of its units available for occupancy and subtract that percentage from 100%. The result will be used as the PHA's projected occupancy percentage, but the PHA will be allowed to adjust the projected occupancy percentage by vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the PHA's control.

(c) *Projected average monthly dwelling rental charge per unit for new Projects.* The projected average monthly dwelling rental charge for new Projects which were not available for occupancy during the budget year prior to the Requested Budget Year and which will reach the End of the Initial Operating Period (EIOP) within the first nine months of the Requested Budget Year, shall be calculated as follows:

(1) If the PHA has another Project or Projects under management which are comparable in terms of elderly and nonelderly resident composition, the PHA shall use the projected average monthly dwelling rental charge for such Project or Projects.

(2) If the PHA has no other Projects which are comparable in terms of elderly and nonelderly resident composition, the HUD Field Office will provide the projected average monthly dwelling rental charge for such Project or Projects, based on comparable Projects located in the area.

(d) *Estimate of additional dwelling rental income.* After implementation of the provisions of any legislation enacted or any HUD administrative action taken subsequent to the effective date of these regulations, which affects rents paid by residents of Projects, HUD may adjust the projected average monthly dwelling rental charge per unit to reflect such change. HUD also shall have complete discretion to reduce or increase the operating subsidy approved for the PHA current fiscal year in an amount equivalent to the change in the rental income.

(e) *PHA's estimate of other income.* All PHAs shall estimate Other Income based on past experience and a reasonable projection for the Requested Budget Year, which estimate shall be subject to HUD approval. The estimated total amount of Other Income, as approved, shall be divided by the number of Unit Months Available to obtain a per unit per month amount.

(f) *Projected operating income level.* The projected average dwelling rental income per unit (calculated under paragraphs (b), (c), and (d) of this section) shall be added to the estimated Other Income (calculated under paragraph (e) of this section) to obtain the Projected Operating Income Level. This amount shall not be subject to the provisions regarding program income in 24 CFR 85.25.

§ 990.110 Adjustments.

Adjustment information submitted to HUD under this section must be accompanied by an original or revised calculation of operating subsidy eligibility.

(a) *Adjustment of base year expense level*—(1) *Eligibility.* A PHA with projects that have been in management for at least one full fiscal year, for which operating subsidy is being requested under the Operating Fund Formula for the first time, may, during its first budget year under the Operating Fund Formula, request HUD to increase its Base Year Expense Level. Included in this category are existing PHAs requesting subsidy for a project or projects in operation at least one full fiscal year under separate ACC, for which operating subsidy has never been paid, except for independent audit costs. This request may be granted by HUD, in its discretion, only where the PHA establishes to HUD's satisfaction that the Base Year Expense Level computed under § 990.105(a) will result in operating subsidy at a level insufficient to support a reasonable level of essential services. The approved increase cannot exceed the lesser of the per unit per month amount by which the top of the Range exceeds the Base Year Expense Level.

(2) *Procedure.* A PHA that is eligible for an adjustment under paragraph (a)(1) of this section may only make a request for such adjustment once for projects under a particular ACC, at the time it submits the calculation of operating subsidy eligibility for the first budget year under the Operating Fund Formula. Such request shall be submitted to the HUD Field Office, which will review, modify as necessary, and approve or disapprove the request. A request under this paragraph must include a calculation of the amount per unit per month of requested increase in the Base Year Expense Level, and must show the requested increase as a percentage of the Base Year Expense Level.

(b) *Adjustments to Utilities Expense Level.* A PHA receiving operating subsidy under § 990.104, excluding those PHAs that receive operating subsidy solely for independent audit (§90.108(a)), must submit an adjustment regarding the Utility Expense Level approved for operating subsidy eligibility purposes. This adjustment, which will compare the actual utility expense and consumption for the PHA fiscal year to the estimates used for subsidy eligibility purposes, shall be submitted on forms prescribed by HUD. This adjustment, applicable to PHA fiscal years beginning on or after January 1, 1999, shall be submitted to the HUD Field Office within 45 days after the close of the PHA fiscal year that is being adjusted. Failure to submit the required adjustment of the Utilities Expense Level by the due date may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies and/or a delay in the recognition of the adjustment. Adjustments under this section normally will be made in the operating subsidy calculation for the second PHA fiscal year following the year being adjusted, unless a repayment plan is necessary as noted in paragraph (d) of this section.

(1) *Rates.* A change in the Utilities Expense Level because of changes in utility rates-to the extent funded by the operating subsidy-will result in an adjustment of future operating subsidy payments. However, where the rate reduction covering utilities, such as water, fuel oil, electricity, and gas, is directly attributable to action by the PHA, such as wellhead purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings, then the PHA will be permitted to retain one-half of the cost savings attributable to its actions for the first year and, upon determination that the action was cost-effective in the first year, for as long as the actions continue to be cost-effective, and the other one-half of the cost savings will be deducted from operating subsidy otherwise payable.

(2) C*onsumption.* (i) Generally, 75% of any decrease in the Utilities Expense Level attributable to decreased consumption after adjustment for any utility rate change, will be retained by

the PHA; 25% will be offset by HUD against subsequent payment of operating subsidy.

(ii) However, in the case of a PHA whose energy conservation measures have been approved by HUD as satisfying the requirements of § 990.107(f)(1) (regarding non-HUD financed incentives for energy conservation improvements), the PHA operating fund eligibility shall reflect the retention of 100% of the savings from decreased consumption after payment of the amount due the contractor until the term of the financing agreement is completed. The decreased consumption is to be determined by adjusting for any utility rate changes and may be adjusted, subject to HUD approval, using a heating degree day adjustment for space heating utilities. The savings realized must be applied in the following order:

(A) Retention of up to 50% of the total savings from decreased consumption to cover training of PHA employees, counseling of residents, PHA management of the cost reduction program and any other eligible costs; and

(B) Prepayment of the amount due the contractor under the contract.

(iii) 25% of an increase in the Utilities Expense Level attributable to increased consumption, after adjustment for any utility rate change, will be reflected in the operating subsidy eligibility for the second PHA fiscal year following the year being adjusted, in accordance with § 990.111.

(iv) PHAs are encouraged to:

(A) Provide conservation incentives and training to residents in order to realize increased utility savings;

(B) Share information with residents regarding changes in utility costs related to rate changes and to changes in consumption; and

(C) Explain to residents conservation benefits and impacts of excess consumption on the operating budget.

(3) *Documentation.* Supporting documentation substantiating the requested adjustments shall be retained by the PHA pending HUD audit.

(c) *Energy conservation financing.* If HUD has approved an energy conservation contract under § 990.107(f)(2), then the PHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the energy conservation measures under the contract, subject to a maximum annual limit equal to the cost savings for that year and a maximum contract period of 12 years.

(1) Each year, the energy cost savings would be determined as follows:

(i) The consumption level that would have been expected if the energy conservation measure had not been undertaken would be adjusted for any change in utility rate and may be adjusted, subject to HUD approval, using a heating degree day adjustment for space heating utilities;

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure would be subtracted from the expected energy cost, to produce the energy cost savings for the year. (See also paragraph (b)(2)(i) of this section for retention of consumption savings.)

(2) If the cost savings for any year during the contract period is less than the amount of operating subsidy to be made available under this paragraph (c) to pay for the energy conservation measure in that year, the deficiency will be offset against the PHA's operating subsidy eligibility for the PHA's next fiscal year.

(3) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 12-year limit) if HUD determines that the shortfall is the result of changed circumstances rather than a miscalculation or misrepresentation of projected energy savings by the contractor or PHA. The contract term may only be extended to accommodate payment to the contractor and associated direct costs.

(d) *Additional HUD-initiated adjustments.* Notwithstanding any other provisions of this subpart, HUD may at any time make an upward or downward adjustment in the amount of the PHA's operating subsidy as a result of data subsequently available to HUD which alters projections upon which the approved operating subsidy was based. If a downward adjustment would cause a severe financial hardship on the PHA, the HUD Field Office may establish a recovery schedule which represents the minimum number of years needed for repayment.

§ 990.111 Submission and approval of operating subsidy calculations and budgets.

(a) *Required documentation.* (1) Prior to the beginning of its fiscal year, the PHA shall prepare an operating budget in a manner prescribed by HUD. The Board of Commissioners shall review and approve the budget by resolution. Each fiscal year, the PHA shall submit to the HUD Field Office, in a time and manner prescribed by HUD, the approved board resolution and the required operating subsidy eligibility calculation forms. The PHA shall submit revised calculations in support of any adjustments based on procedures prescribed by HUD.

(2) HUD may direct the PHA to submit its complete operating budget if the PHA has failed to achieve certain specified operating standards, or for other reasons which in HUD's determination threaten the PHA's future serviceability, efficiency, economy, or stability.

(b) *HUD operating budget review.* (1) The HUD Field Office will perform a detailed review on operating budgets that are subject to HUD review and approval. If the HUD Field Office finds that an operating budget is incomplete, includes illegal or ineligible expenditures, mathematical errors, errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Field Office may at any time require the submission by the PHA of further information regarding an operating budget or operating budget revision.

(2) When the PHA no longer is operating in a manner that threatens the future serviceability, efficiency, economy, or stability of the housing it operates, HUD will notify the PHA that it no longer is required to submit a complete operating budget to HUD for review and approval.

(c) *Compliance with environmental review requirements*—(1) *General.* Operating subsidy funds made available to a PHA to support the operation and management of public housing are generally for activities that are not subject to environmental review requirements. A PHA, however, may use public housing program resources (including operating subsidy funds, rental and nonrental income, and operating reserves) to carry out non-routine maintenance and capital expenditure activities that may require an environmental review, as those activities are defined in HUD's prescribed Chart of Accounts.

(2) *Initial operating budget.* The ACC requires that operating expenditures may not be incurred except pursuant to an approved operating budget. Before the funding of non-routine maintenance and capital expenditure activities may be incorporated into the PHA's initial operating budget, and before the PHA may commit any funds to such activities, the PHA must obtain either:

(i) An environmental review from the Responsible Entity and submit and receive HUD approval of a Request for Release of Funds under part 58 of this title, or, in cases where HUD has determined to do an environmental review under part 50 of this title, the

PHA must obtain an environmental approval from HUD; or

(ii) A determination from the Responsible Entity under part 58 of this title that the PHA's proposed non-routine maintenance and capital expenditure activities are exempt from environmental review in accordance with § 58.34(a)(12) of this title.

(3) *Revisions to operating budget.* If subsequent to adoption of its initial operating budget, a PHA determines to undertake a new non-routine maintenance or capital expenditure activity, the PHA must obtain an environmental review and release of funds, HUD environmental approval, or an exemption from such review, as described in paragraph (c)(2) of this section, before the funding of the activity may be incorporated into a revised operating budget and before the PHA may commit any funds to such activities.

(4) *Determination of exempt activities.* If the Responsible Entity documents that a proposed non-routine maintenance or capital expenditure activity is an exempt activity, as described in (c)(2)(ii) of this section, no further action is required from the PHA and the activity may be incorporated into the PHA's initial or revised operating budget, as appropriate.

§ 990.112 Payments procedure for operating subsidy under the Operating Fund Formula.

(a) *General.* Subject to the availability of funds, payments of operating subsidy under the Operating Fund Formula shall be made generally by electronic funds transfers, based on a schedule submitted by the PHA and approved by HUD. The schedule may provide for several payments per month. If a PHA has an unanticipated, immediate need for disbursement of approved operating subsidy, it may make an informal request to HUD to revise the approved schedule. (Requests by telephone are acceptable.)

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of a PHA's budget year under this part, annual or monthly or quarterly payments of operating subsidy shall be made, as provided in paragraph (a) of this section, based upon the amount of the PHA's operating subsidy for the previous budget year or such other amount as HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available to make payments approvable under the Operating Fund Formula for operating subsidy payable by HUD, HUD shall have complete discretion to revise, on a pro rata basis or other basis established by HUD, the amounts of operating subsidy to be paid to PHAs.

§ 990.113 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.

(a) *Policy.* The income of each family must be reexamined at least annually. PHAs must be in compliance with this reexamination requirement to be eligible to receive full operating subsidy payments.

(b) *PHAs in compliance with requirements.* Each submission of the original calculation of operating subsidy eligibility for a fiscal year shall be accompanied by a certification by the PHA that it is in compliance with the annual income reexamination requirements and that rents have been or will be adjusted in accordance with current HUD requirements.

(c) *PHAs not in compliance with requirements.* Any PHA not in compliance with annual income reexamination requirement at the time of the submission of the calculation of operating subsidy eligibility shall furnish to the HUD Field Office a copy of the procedure it is using to attain compliance and a statement of the number of families that have undergone reexamination during the twelve months preceding the date of the Operating Budget submission, or the revision thereof. If, on the basis of such submission, or any other information, the Field Office Director determines that the PHA is not substantially in compliance with the annual income reexamination requirement, he or she shall withhold payments to which the PHA might otherwise be entitled under this part, equal to his or her estimate of the loss of rental income to the PHA resulting from its failure to comply with those requirements.

§ 990.114 Phase-down of subsidy for units approved for demolition.

(a) *General.* Units that have both been approved by HUD for demolition and been vacated in FY 1995 and after will be excluded from a PHA's determination of Unit Months Available when vacated, but they will remain eligible for subsidy in the following way:

(1) For the first twelve months beginning with the month that a unit meets both conditions of being approved for demolition and vacant, the full AEL will be allowed for the unit.

(2) During the second twelve-month period after meeting both conditions, 66% of the AEL will be allowed for the unit.

(3) During the third twelve-month period after meeting both conditions, 33% of the AEL will be allowed for the unit.

(b) *Special case for long-term vacant units.* Units that have been vacant for longer than 12 months when they are approved for demolition are eligible for funding equal to 20% of the AEL for a 12-month period.

(c) *Treatment of units replaced with Section 8 Certificates or Vouchers.* Units that are replaced with Section 8 Certificates or Vouchers are not subject to the provisions of this section.

(d) *Treatment of units replaced with public housing units.* When replacement conventional public housing units become eligible for operating subsidy, the demolished unit is no longer eligible for any funding under this section.

(e) *Determination of what units are ''replaced.''* For purposes of this section, replacements are applied first against units that otherwise would fall in paragraph (a) of this section; any remaining replacements should be used to reduce the number of units qualifying under paragraph (b) of this section.

(f) *Treatment of units combined with other units.* Units that are removed from the inventory as a result of being combined with other units are not considered to be demolished units for this purpose.

§ 990.116 Increases in dwelling rental income.

(a) *General.* As described in § 990.109(b)(1), PHAs shall be allowed to retain 50% of any increases in dwelling rental income, so long as the PHA uses the increased income for the provision of resident-related improvements and services. The retained income will not be recognized in the PHA's calculation under the Operating Fund Formula.

(b) *Eligible uses for increased rental revenue.* The uses for the retained income must be developed with front end resident participation and ongoing input and shall be made part of the PHA plan submission. (*See* 24 CFR part 903). Examples of eligible uses for the retained income include, but are not limited to:

(1) Physical and management improvements that benefit residents;

(2) Resident self-sufficiency services;

(3) Maintenance operations;

(4) Resident employment and training services;

(5) Resident safety and security improvements and services; and

(6) Optional earned income exclusions.

§ 990.117 Determining actual and requested budget year occupancy percentages.

(a) *Actual occupancy percentage.* When submitting Operating Fund Formula calculations for Requested Budget Years, the PHA shall determine an Actual Occupancy Percentage for all Project Units included in the Unit Months Available. The PHA shall have the option of basing this option on either:

(1) The number of units occupied on the last day of the month that ends 6 months before the beginning of the Requested Budget Year; or

(2) The average occupancy during the month ending 6 months before the beginning of the Requested Budget Year. If the PHA elects to use an average occupancy under this paragraph (a)(2), the PHA shall maintain a record of its computation of its Actual Occupancy Percentage.

(b) *Requested budget year occupancy percentage.* The PHA will develop a Requested Budget Year Occupancy Percentage by taking the Actual Occupancy Percentage and adjusting it to reflect changes up or down in occupancy during the Requested Budget Year due to HUD-approved activities such as units undergoing modernization, new development, demolition, or disposition. If after the submission and approval of the Operating Fund Formula calculations for the Requested Budget Year, there are changes up or down in occupancy because of modernization, new development, demolition or disposition that are not reflected in the Requested Budget Year Occupancy Percentage, the PHA may submit a revision to reflect the actual change in occupancy due to these activities.

(c) *Documentation required to be maintained.* The PHA must maintain and, upon HUD's request, make available to HUD specific documentation of the occupancy status of all units, including long-term vacancies, vacant units undergoing modernization, and units vacant due to circumstances and actions beyond the PHA's control. This documentation shall include a listing of the units, street addresses, and project/management control numbers.

§ 990.120 Audit.

PHAs that receive financial assistance under this part shall comply with the audit requirements in 24 CFR part 85.26. If a PHA has failed to submit an acceptable audit on a timely basis in accordance with that part, HUD may arrange for, and pay the costs of, the audit. In such circumstances, HUD may withhold, from assistance otherwise payable to the PHA under this part, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the PHA's books and records into auditable condition. The costs to place the PHA's books and records into auditable condition do not generate additional subsidy eligibility under this part.

§ 990.121 Effect of rescission.

If there is a rescission of appropriated funds that reduces the level of funding under the Public Housing Capital Fund program, to the extent that the PHA can document that it is not possible to complete all the vacant unit rehabilitation in the PHA's approved Annual Statement, the PHA may seek and HUD may grant a waiver for 1 fiscal year to permit full eligibility under the Operating Fund Formula for those units approved but not funded. (See part 905 of this title for additional information regarding the Capital Fund program.)

Dated: June 7, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–17026 Filed 7–7–00; 8:45 am]

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Federal Register

Monday,
July 10, 2000

Part IV

Department of Housing and Urban Development

24 CFR Part 982

Section 8 Housing Choice Voucher Program; Expansion of Payment Standard Protection; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4586–I–01]

RIN 2577–AC18

Section 8 Housing Choice Voucher Program; Expansion of Payment Standard Protection

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: On October 21, 1999, HUD published a final rule implementing the statutory merger of the Section 8 tenant-based and certificate programs into the new Housing Choice Voucher program. This interim rule amends HUD's regulations governing this new merger program to expand the regulatory payment standard protection against subsidy reduction. The October 21, 1999 final rule limited payment standard protection to the first 24 months of the lease term. The interim rule provides that a family is not subject to a subsidy reduction until the second regular reexamination of family income and composition following the payment standard reduction. This protection extends for the duration of the lease term. This interim rule also corrects a typographical error contained in the October 21, 1999 final rule.

DATES: *Effective Date:* August 9, 2000. *Comment Due Date:* September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477, extension 4069 (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:

I. Background

On October 21, 1999 (64 FR 56894), HUD published a final rule implementing the Section 8 tenant-based program provisions of the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Pub.L. 105–276, approved October 21, 1998) (referred to as the ''Public Housing Reform Act''). Of particular significance, the October 21, 1999 final rule implemented section 545 of the Public Housing Reform Act. Section 545 provides for the complete merger of the Section 8 tenant-based certificate and voucher programs. HUD's regulations for the new Section 8 merger program (known as the ''Housing Choice Voucher program'') are located at 24 CFR part 982.

The October 21, 1999 final rule became effective on November 22, 1999. The final rule was preceded by HUD's publication of an interim rule on May 14, 1999 (64 FR 56894). The final rule took into consideration the public comments received on the interim rule, and most of the changes made at the final rule stage were in response to public comment.

II. This Interim Rule

The October 21, 1999 final rule amended the part 982 regulations to provide that payment standard protection will only apply during the first two years of the lease term. After the first two years of the lease, a family's subsidy would be based on the appropriate payment standard determined at the last regular annual reexamination of family income.

On reconsideration, HUD believes that this provision is too restrictive. HUD wishes to provide the benefit of protected subsidy levels to a greater number of assisted families—not just to new participants in the Housing Choice Voucher program, or assisted families moving to a new unit. HUD believes payment standard protection should extend for the duration of the lease term, and not be restricted to a limited number of years.

Accordingly, HUD is amending 24 CFR part 982 to expand the regulatory payment standard protection. This interim rule provides that a family is not subject to a subsidy reduction until the second regular reexamination of family income and composition following the payment standard reduction. This protection extends for the duration of the lease term.

This final rule also corrects a typographical error contained in the October 21, 1999 final rule. Specifically, the interim rule corrects § 982.501(c), which mistakenly provides that the provisions of § 982.521 apply solely to a tenancy under the Section 8 rental certificate program.

III. Justification for Interim Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is contrary to the public interest. The reasons for HUD's determination are as follows.

HUD believes that the limits on payment standard protection established by the October 21, 1999 final rule are too restrictive. The interim rule corrects this error by providing assisted families with broader and more equitable regulatory safeguards against reductions in subsidy. Specifically, the interim rule extends the regulatory payment standard protection to all assisted families, not just to new program participants and assisted families moving to a new unit.

Delaying the effectiveness of this interim rule to solicit prior public comment would result in uncertainty among PHAs and affected families, as PHAs consider adjustments in payment standards under the existing requirements of the October 21, 1999 final rule without knowing the full scope of the additional regulatory changes to be made by HUD. Immediate effectiveness of this interim rule will reduce this uncertainty, and will allow PHAs to make payment standard adjustments knowing the likely implications of these decisions. Neither PHAs nor Section 8 residents will be disadvantaged by the change.

HUD also notes that the new Housing Choice Voucher program was implemented through an extensive public process, including three public forums across the nation, as well as the customary notice and comment rulemaking procedures.

Although HUD believes that good cause exists to publish this rule for effect without prior public comment, HUD recognizes the value of public comment in the development of its regulations. HUD has, therefore, issued these regulations on an interim basis and has provided the public with a 60-day comment period. HUD welcomes comment on the regulatory amendments made by this interim rule. The public comments will be addressed in the final rule.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined

that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was prepared on the October 21, 1999 final rule in accordance with the HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4223). That Finding is applicable to this interim rule, and is available for public inspection between the hours of 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, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary has reviewed this interim rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this interim rule would not have a significant economic impact on a substantial number of small entities. The interim rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under Section 8 of the United States Housing Act of 1937. Specifically, the final rule would establish requirements governing tenant-based assistance for an eligible family. The interim regulatory amendments would not change the amount of funding available under the Section 8 voucher program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This interim rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This interim rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Domestic Assistance number for this program is 14.855.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Rent subsidies.

Accordingly, for the reasons discussed in the preamble, HUD is amending 24 CFR part 982 as follows:

PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. In § 982.501(c), revise the reference to ''982.520, and 982.521'' to read ''and 982.520.''

3. Amend § 982.505 by revising paragraphs (c)(3), (c)(4), and (c)(5) to read as follows:

§ 982.505 Voucher tenancy: How to calculate housing assistance payment.

* * * * *

(c) * * *

(3) *Decrease in the payment standard amount during the HAP contract term.* If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount. The PHA must determine the payment standard for the family as follows.

(i) *Step 1:* At the first regular reexamination following the decrease in the payment standard amount, the PHA shall determine the payment standard for the family in accordance with paragraphs (c)(1) and (c)(2) of this section (using the decreased payment standard amount).

(ii) *Step 2 (first reexamination payment standard amount):* The PHA shall compare the payment standard amount from step 1 to the payment standard amount last used to calculate the monthly housing assistance payment for the family. The payment standard amount used by the PHA to calculate the monthly housing assistance payment at the first regular reexamination following the decrease in the payment standard amount is the higher of these two payment standard amounts. The PHA shall advise the family that the application of the lower payment standard amount will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard amount.

(iii) *Step 3 (second reexamination payment standard amount):* At the second regular reexamination following the decrease in the payment standard amount, the lower payment standard amount shall be used to calculate the monthly housing assistance payment for the family unless the PHA has subsequently increased the payment standard amount, in which case the payment standard amount is determined in accordance with paragraph (c)(4) of this section.

(4) *Increase in the payment standard amount during the HAP contract term.* If the payment standard amount is increased during the term of the HAP contract, the increased payment standard amount shall be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard amount.

(5) *Change in family unit size during the HAP contract term.* Irrespective of any increase or decrease in the payment standard amount, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard amount for the family beginning at the family's first regular reexamination following the change in family unit size.

Dated: June 15, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–17024 Filed 7–7–00; 8:45 am]

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Monday,
July 10, 2000

Part V

Department of Housing and Urban Development

24 CFR Part 964

Direct Funding of Public Housing Resident Management Corporations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 964

[Docket No. FR–4501–F–02]

RIN 2577–AC12

Direct Funding of Public Housing Resident Management Corporations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: On October 21, 1999, HUD published a proposed rule to revise its regulations regarding resident participation and resident opportunities in public housing. The rule proposed that a resident management corporation (RMC) may receive capital and operating funds from HUD if the RMC has primary management responsibility for the public housing project and HUD determines that the RMC has the capacity to effectively discharge such responsibility. This rule makes final the policies and procedures contained in the October 21, 1999 proposed rule, and takes into consideration the public comments received on the proposed rule. After careful consideration of all the public comments received on the October 21, 1999 proposed rule, HUD has decided to adopt the proposed rule without change.

DATES: *Effective Date:* August 9, 2000.

FOR FURTHER INFORMATION CONTACT: Paula Blunt, Associate Deputy Assistant Secretary, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW, Room 4226, Washington, DC 20410; telephone (202) 619–8201 (this is not a toll-free telephone number). Persons with hearing or speech disabilities may access this number via TTY by calling the free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION

I. Statutory Background

A. Resident Management of Public Housing

Section 20 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (referred to as the ''1937 Act'') encourages resident management of public housing projects as a means of improving existing living conditions in public housing. HUD has implemented section 20 in its regulations at 24 CFR part 964 (entitled ''Tenant Participation and Tenant Opportunities in Public Housing'').

Under section 20, and 24 CFR part 964, public housing residents may form resident management corporations (RMCs) for the purposes of managing public housing. The RMC enters into a management contract with the public housing agency (PHA) establishing the respective management rights and responsibilities of the RMC and the PHA. The contract may provide for the RMC to perform any or all of the management functions for which the PHA is responsible to HUD. The performance of the RMC is subject to periodic review by the PHA to ensure that the RMC complies with all applicable requirements and standards of performance.

B. Public Housing Reform

On October 21, 1998, President Clinton signed into law the Quality Housing and Work Responsibility Act of 1998 (Title V of the Fiscal Year 1999 HUD Appropriations Act; Public Law 105–276; 112 Stat. 2461, 2522) (referred to as the ''Public Housing Reform Act''). The Public Housing Reform Act constitutes a substantial overhaul of HUD's public housing and Section 8 assistance programs. The changes made by the Public Housing Reform Act are directed at revitalizing and improving HUD's public housing and Section 8 tenant-based programs. These changes are also designed to provide for more resident involvement, and to increase resident participation and awareness in creating and maintaining a positive living environment.

II. The October 21, 1999 Proposed Rule

On October 21, 1999 (64 FR 56890), HUD published a proposed rule to amend 24 CFR part 964. The purpose of the proposed rule was to implement the statutory changes made to section 20 of the 1937 Act made by section 532 of the Public Housing Reform Act. Section 532 of the Public Housing Reform Act provides for the direct provision of capital and operating assistance to an RMC if: (1) The RMC petitions HUD for the release of the funds; (2) the management contract between the RMC and the PHA provides for the RMC to assume the primary management responsibilities of the PHA; and (3) HUD determines that the RMC has the capability to effectively discharge such responsibilities.

The proposed rule provided that HUD would consider this third requirement to be satisfied if the RMC is designated at least a ''standard performer'' under the Public Housing Assessment System (PHAS) (see 24 CFR part 902); and the RMC is not in violation of any financial, accounting, procurement, civil rights, fair housing, or other program requirements that HUD determines call into question the capability of the RMC to effectively discharge its responsibilities under the contract.

In all other cases where direct funding to an RMC is not provided, operating and capital funding would be provided to the RMC by the PHA. If HUD provides direct funding to an RMC, the PHA would not be responsible for the actions of the RMC.

In addition to implementing section 532 of the Public Housing Reform Act, the October 21, 1999 proposed rule also proposed to make one clarifying change to 24 CFR part 964. Specifically, the rule proposed to revise § 964.225 (entitled ''Resident management requirements'') to clarify that an RMC must be in compliance with any local licensing requirement, or other local requirement governing the qualifications or operations of a property manager.

The preamble to the October 21, 1999 proposed rule provides additional information regarding the changes to 24 CFR part 964.

III. This Final Rule

This final rule makes effective the policies and procedures contained in the October 21, 1999 proposed rule. The public comment period for the proposed rule closed on December 20, 1999. HUD received three public comments on the proposed rule. Comments were submitted by a national RMC organization, a law firm representing several RMCs, and a public housing resident council. HUD appreciates the suggestions offered by the commenters and carefully considered the issues raised by them. For the reasons discussed below, however, HUD has chosen not to implement their suggestions. After careful consideration of the public comments, HUD has decided to adopt the October 21, 1999 proposed rule without change. This following section of the preamble presents a discussion of the significant issues raised by the public commenters and HUD's responses to their comments.

IV. Discussion of the Public Comments Received on the October 21, 1999 Proposed Rule

A. Support for Proposed Rule

One of the commenters expressed support for the proposed rule. The commenter wrote that it ''strongly support[s] the regulations to permit direct funding of resident management corporations by HUD.'' The commenter also wrote that the ''direct funding of resident management corporations is essential.''

B. Comments Beyond Scope of Proposed Rule

As discussed above, the purpose of the October 21, 1999 proposed rule was to implement section 532 of the Public Housing Reform Act. Several of the commenters submitted comments that did not concern the direct funding of RMCs and, therefore, were beyond the scope of the proposed rule. For example, one of the commenters recommended that HUD should clarify what comprises a duly constituted RMC. Two commenters suggested that the final rule should provide for RMC participation on the PHA's board of commissioners, or similar governing body. Another commenter suggested that public housing management contracts should be developed with the full participation of RMCs and their national organizations. There were also several other public comments that, although suggesting general changes to HUD's resident participation regulations at 24 CFR part 964, did not concern the proposed regulatory amendments described in the October 21, 1999 proposed rule.

HUD thanks these commenters for their helpful comments and recommendations. However, since these comments do not concern the direct funding of RMCs, HUD has not revised the proposed rule to incorporate the suggestions made by the commenters. These comments will be taken into consideration during HUD's development of a future proposed rule that will implement the other resident related amendments made by the Public Housing Reform Act.

In addition to providing for the direct funding of RMCs, the Public Housing Reform Act makes various other amendments to the statutory requirements regarding resident participation and resident opportunities in public housing. For example, the Public Housing Reform Act requires the participation of residents on the governing board of a PHA (section 505 of the Act) and provides for grant funding of services for public housing residents (section 538 of the Act).

The resident board membership requirements established by section 505 of the Act have been implemented through a separate final rule published on October 21, 1999 (64 FR 56870). The other changes made by the Public Housing Reform Act affecting the part 964 requirements will be the subject of a separate proposed rulemaking. HUD is committed to the development of this proposed rule with the active participation of public housing residents. HUD will solicit resident input through the scheduling of public forums, solicitations for written comments, and/or other appropriate means.

HUD's goal in undertaking this future rulemaking is to develop a set of easy-to-understand regulations that reflect the meaningful contributions of public housing residents. Accordingly, the proposed rule will not only implement statutory amendments made by the Public Housing Reform Act, but will also streamline and reorganize 24 CFR part 964 to simplify and improve the clarity of HUD's resident participation requirements.

In addition to rulemaking, HUD is also taking several other steps to promote effective resident participation in public housing (see Section V. of this preamble, below).

C. Comments on the October 21, 1999 Proposed Rule

Comment: Standards for determining RMC eligibility for direct funding should be revised to allow for innovative changes and concepts. Two commenters objected to the eligibility standards described in the proposed rule. The commenters suggested that the final rule should provide greater flexibility in determining RMC eligibility for direct funding.

HUD Response. As noted above, section 532 of the Public Housing Reform Act establishes the conditions that an RMC must satisfy in order to receive direct funding. Specifically, the statute provides that an RMC may directly receive capital and operating assistance, if: (1) The RMC petitions HUD for the release of the funds; (2) the management contract between the RMC and the PHA provides for the RMC to assume the primary management responsibilities of the PHA; and (3) HUD determines that the RMC has the capability to effectively discharge such responsibilities. The language of the October 21, 1999 proposed rule, and this final rule, merely track the statutory language of section 532.

Only the third requirement described above provides HUD with discretion in determining whether an RMC is eligible to receive direct funding. This final rule provides that HUD will consider this third requirement to be satisfied if the RMC is designated at least a ''standard performer'' under the PHAS, and the RMC is not in violation of any financial, accounting, procurement, civil rights, fair housing, or other program requirements that HUD determines call into question the capability of the RMC to effectively discharge its responsibilities under the contract.

This third requirement will not impose any new requirements on RMCs. The final rule reflects existing performance measures and program requirements that RMCs must already comply with. For example, RMCs are already subject to the PHAS performance measures described in 24 CFR part 902. Further, RMCs are currently required to comply with all applicable program, civil rights, and financial requirements as a condition of assistance under HUD's public housing programs.

Although HUD welcomes ''innovative changes and concepts'' in the development of its regulations, the commenters did not provide specific recommendations for HUD's consideration. Further, HUD believes that the use of the existing measures described above will allow HUD to accurately determine RMC management capability, while minimizing the burdens imposed on RMCs. Accordingly, the proposed rule has not been revised.

Comment: Determination of eligibility for direct funding should be made in consultation with RMCs. One commenter suggested that HUD should be required to consult with RMCs currently receiving direct funding, or with an RMC national organization, before making a determination on an RMC's request to receive direct funding.

HUD Response. Section 532 of the Public Housing Reform Act provides that an RMC is eligible for direct funding if (among other requirements) ''the Secretary determines that the [RMC] has the capability to effectively discharge'' the primary management responsibilities of the PHA. This statutory language makes clear that the responsibility for determining whether an RMC is eligible to receive direct capital and operating assistance rests with the Secretary.

Further, as noted in the response to the preceding comment, section 532 establishes very specific criteria that HUD must use in determining whether an RMC is eligible for direct funding. Where the statute provides HUD with discretion, HUD has chosen to rely on current and familiar requirements (such as compliance with the PHAS and applicable civil rights requirements). The use of already existing measures will allow HUD to accurately and expeditiously determine whether an RMC has the required management capability to directly receive funding. The establishment of an additional consultation procedure has the potential to unnecessarily delay HUD eligibility determinations. Accordingly, HUD has

not adopted the suggestion made by the commenter.

Comment: Final rule should establish time frame for HUD approval of direct funding requests. Two commenters suggested that the final rule should provide a time frame ''under which HUD must respond to a RMC's request for direct funding.'' One of the commenters recommended that the time period not be longer than thirty (30) days.

HUD Response. HUD has not adopted the revision recommended by these commenters. HUD will endeavor to process all RMC petitions for direct funding as expeditiously as possible. As noted above, HUD will rely on current and well-known measures in determining whether an RMC is eligible for the direct receipt of capital and operating assistance. The use of these existing requirements will facilitate HUD's processing of RMC petitions, and help to ensure that HUD's eligibility determinations are made on a timely basis. Therefore, HUD believes that the establishment of the suggested deadline is unnecessary.

Comment: The final rule should provide mechanism for an RMC to appeal a HUD denial of request for direct funding. Two commenters made this suggestion.

HUD Response. HUD has not adopted the revision recommended by these commenters. HUD would prefer to solicit public comment before establishing the suggested appeals process, or any other similar procedural remedy available to an RMC that has been denied direct assistance. Rather than delay the effectiveness of this final rule in order to solicit additional public comment, HUD is proceeding to finalize the October 21, 1999 proposed rule without incorporating the commenter's recommendation. HUD will more fully consider the suggested appeals mechanism during its development of the future proposed rule amending 24 CFR part 964 in its entirety.

V. HUD's Ongoing Efforts To Promote Effective Resident Participation

To further promote effective resident participation in public housing, HUD is taking various steps to promote resident involvement in creating and maintaining a positive living environment. As discussed above, HUD is developing a proposed rule that will implement the resident related amendments made by the Public Housing Reform Act. HUD is committed to developing this proposed rule with the active participation of public housing residents. HUD is taking several other steps to increase resident participation in public housing. For example, HUD will conduct training for resident organizations and PHAs on the new Public Housing Reform Act.

VI. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule and is available for public inspection between the hours of 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, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this final rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* The final rule is exclusively concerned with public housing agencies that contract with RMCs for the management and operation of specific public housing projects. Specifically, the rule would make various conforming amendments to 24 CFR part 964 (captioned ''Tenant Participation and Tenant Opportunities in Public Housing'') to reflect statutory changes made by the Public Housing Reform Act. Under the definition of ''Small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The Public Housing Reform Act improves and simplifies the way in which PHAs and RMCs are funded. Specifically, section 519 of the Public Housing Reform replaces funding under the existing Performance Funding System (PFS) with formula funding under the new Operating Fund and the Capital Improvement Assistance Program (CIAP) and the Comprehensive Grant Program with formula allocations under the new Capital Fund. The implementation of section 519 is beyond the scope of this proposed rule. Accordingly, the economic impact of this final rule is not significant, and it will not affect a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule will not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule will not have federalism implications and will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this rule under Executive Order 12866 (captioned ''Regulatory Planning and Review'') and determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 964

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 964 as follows:

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

1. The authority citation for part 964 is revised to read as follows:

Authority: 42 U.S.C. 1437d, 1437g, 1437r, 3535(d).

2. Amend § 964.225 as follows:

a. Redesignate paragraphs (h), (i), (j), and (k) as paragraphs (i), (j), (k), and (l), respectively;

b. Add new paragraph (h); and

c. Revise newly designated paragraph (j).

The addition and revisions to § 964.225 read as follows:

§ 964.225 Resident management requirements.

* * * * *

(h) *Direct provision of operating and capital assistance to RMC.* (1) *Direct provision of assistance to RMC.* The ACC shall provide for the direct provision of operating and capital assistance by HUD to an RMC if:

(i) The RMC petitions HUD for the release of funds;

(ii) The contract provides for the RMC to assume the primary management responsibilities of the PHA;

(iii) The RMC has been designated as at least a ''standard performer'' under the Public Housing Assessment System (PHAS) (see 24 CFR part 902); and

(iv) The RMC is not in violation of any financial, accounting, procurement, civil rights, fair housing or other program requirements that HUD determines call into question the capability of the RMC to effectively discharge its responsibilities under the contract.

(2) *Use of assistance.* Any direct capital or operating assistance provided to the RMC must be used for purposes of performing eligible activities with respect to public housing as may be provided under the contract.

(3) *Responsibilities of PHA.* If HUD provides direct funding to a RMC under paragraph (h)(1) of this section, the PHA is not responsible for the actions of the RMC.

* * * * *

(j) *Bonding, insurance, and licensing.* (1) *Bonding and insurance.* Before assuming any management responsibility under its contract, the RMC must provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the PHA) to protect HUD and the PHA against loss, theft, embezzlement, or fraudulent acts on the part of the RMC or its employees.

(2) *Licensing and other local requirements.* An RMC must be in compliance with any local licensing, or other local requirement, governing the qualifications or operations of a property manager.

* * * * *

Dated: May 8, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–17025 Filed 7–7–00; 8:45 am]

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Federal Register

Monday,
July 10, 2000

Part VI

Department of Housing and Urban Development

24 CFR Part 960

Pet Ownership in Public Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 960

[Docket No. FR–4437–F–02]

RIN 2577–AB94

Pet Ownership in Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to permit public housing residents to own pets, subject to reasonable requirements that the public housing agency may establish in consultation with the residents. This rule implements pet ownership policies and general requirements for residents of public housing other than public housing developments for the elderly or persons with disabilities. HUD published a proposed rule on June 23, 1999, and this final rule takes into consideration the public comments received on the proposed rule. This rule does not affect the pre-existing regulations covering pet ownership requirements for residents of public housing developments for the elderly or persons with disabilities.

DATES: *Effective Date*: August 9, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia S. Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Room 4222, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–5000; telephone (202) 708–0744 (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 (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. The June 23, 1999 Proposed Rule

The June 23, 1999 rule proposed to implement section 526 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, approved October 21, 1998) (referred to as the ''Public Housing Reform Act''), which added new section 31 (captioned ''Pet Ownership in Public Housing'') to the United States Housing Act of 1937 (see 42 U.S.C. 1437z–3) (the Act). Section 31 establishes pet ownership requirements for residents of public housing other than public housing developments for the elderly or persons with disabilities. The proposed rule can be found at 64 FR 33640 (June 23, 1999).

The June 23, 1999 rule proposed to amend 24 CFR part 960 by adding a new subpart G, consisting of the following new sections: § 960.701 (captioned ''Purpose''), stating that the purpose of subpart G is to permit pets in public housing; § 960.703 (captioned ''Applicability''), limiting the applicability of the subpart G regulations to public housing other than public housing developments for the elderly or persons with disabilities (pet ownership in such housing is covered in 24 CFR part 5, subpart C); § 960.705 (captioned ''Animals that assist, support, or provide service to persons with disabilities''), exempting service animals for people with disabilities; and § 960.707 (captioned ''Pet ownership''), implementing the primary requirements of section 31 of the Act.

The main substantive regulatory section in the proposed rule, § 960.707, consisted of four paragraphs. Paragraph (a) provided that a public housing resident may own one or more common household pets if the resident maintains each pet responsibly, in accordance with applicable State and local public health, animal control and animal anti-cruelty laws and regulations, and in accordance with the policies established in the Public Housing Agency (PHA) Plan. Paragraph (b) provided examples of reasonable requirements that PHAs may impose on pet owners, such as limits on the number of animals in a unit and certain fees, specifically non-refundable nominal fees to cover costs to the development and refundable pet deposits. The non-refundable nominal fee is intended to cover the reasonable operating costs to the development relating to the presence of pets, and the refundable pet deposit is intended to cover additional costs not otherwise covered, such as damage to the unit, for example, attributable to a resident's pet. Paragraph (c), as proposed, provided for placing pet deposits into an escrow account from which the unused portion would be refunded. Finally, paragraph (d) provided that a PHA's pet policies under this rule must be included in the agency's Annual Plan under 24 CFR part 903.

II. This Final Rule

This final rule adopts most of the core provisions of the proposed rule, but makes some changes to the proposal in response to public comments received. Specifically, in response to comments stating that the rule did not fully implement Congressional intent, HUD has revised the purpose section, § 960.701, to more fully express Congress' intent that PHAs permit pet ownership subject to reasonable rules.

HUD has made editorial changes to § 960.703 to more properly distinguish this rule from the existing rule that is found in 24 CFR part 5, subpart C, that pertains to pet ownership by the elderly and persons with disabilities. Because of these changes, a cross-reference has been removed.

Additionally, in response to comments that applicable State or local law should govern pet deposits, HUD has modified the proposed refundable escrow requirement in § 960.707(d), to provide that State or local laws applicable to pet deposits or, if applicable, rental security deposits apply.

Section 960.705 has been recaptioned and slightly revised to conform to fair housing requirements regarding animals that assist, support, or provide service to persons with disabilities. As before, the section generally states that this section does not apply to such animals, and does not affect either a PHAs right to require residents to comply with other existing requirements regarding such animals, or existing protections for such assistive animals. The primary difference from the proposed rule is that different language is used to define such animals, including the idea that these animals are necessary as a reasonable accommodation to persons with disabilities.

Section 960.707(b), which lists examples of reasonable requirements that PHAs may impose on pet owners, has been revised to add a provision specifying that PHAs may require pet owners to register their pets, and have them spayed or neutered. Also, a slight modification was made to paragraph (b)(3) of § 960.707 to clarify the applicability of State and local law to the issue of classifying certain animals as dangerous. A new paragraph (c) has been added to prohibit PHAs from requiring that pet owners remove their pet's vocal chords, in response to comments on that issue.

In § 960.707(b)(1), the distinction between nonrefundable nominal pet fees and refundable pet deposits has been clarified. Specifically, the nonrefundable fee is for general costs to the development associated with pet ownership, and the deposit is for costs attributable to particular pets that are not otherwise covered. This distinction is further explained in responses to comments.

Finally, further specificity has been added regarding the Annual Plan process in what is now § 960.707(e) to specify that, unless otherwise provided by 24 CFR 903.11, Annual Plans are required to contain information regarding the PHA's pet policies, as described in 24 CFR 903.7(n), beginning

with PHA fiscal years that commence on or after January 1, 2001.

III. Discussion of the Public Comments

The comment period for this rule closed on August 23, 1999. HUD received 3,777 comments. The commenters included public housing residents, resident organizations, public housing authorities, legal aid organizations, public interest animal advocacy groups, and individuals interested in issues involving animal welfare. HUD received approximately 3,000 additional comments after the close of the comment period. To the extent possible, HUD reviewed these comments to determine if any raised issues not already covered by the almost 4,000 timely comments.

HUD received a number of comments from commenters opposed to this rulemaking as a whole and to the idea of allowing pet ownership in public housing. This rulemaking is required by section 31 of the Act and because the issue of whether to allow pet ownership in public housing is not within HUD's discretion to change, there is no further discussion of this issue in the preamble. A summary of the remaining comments follows.

General Comments

Comment: The regulation is so general that it fails to implement Congressional intent. While the proposed rule allowing PHAs broad discretion comports with the 1998 public housing reform, the rule may be so general that it does not implement Congress' intent that PHAs permit pet ownership. The rule should do more than merely restate the general guidance given by Congress, and therefore HUD should publish another proposed rule.

Response: In order to more clearly state the intent of the rule to allow public housing residents to own pets, HUD has modified the purpose section to state that PHAs must allow pet ownership, subject to reasonable requirements. Insofar as portions of the rule mirror the statutory language, the rule therefore reflects Congressional intent that PHAs must permit pet ownership subject to reasonable requirements. HUD acknowledges that the rule leaves important aspects to local decision-making. This, however, is also consistent with Congressional intent, as the statute provides that applicable State and local public health, animal control and animal anti-cruelty laws and regulations, as well as policies established by the PHA, govern pet ownership in public housing. The fact that the rule requires information regarding pet policies to be included in the agency's Annual Plan as provided in 24 CFR 903.7 and thus subject to public hearing, Resident Advisory Board consultation and HUD review requirements applicable to the plan insures that the intent of the provision will be implemented with substantial community input, to provide guidance. Furthermore, HUD believes that the proposed rule gave adequate public notice of the issues involved, by providing examples of the types of guidelines PHAs could institute and specifying that PHAs and residents could also make local decisions on pet policy as part of the Annual Plan process under 24 CFR part 903. This approach is similar to the discretion PHAs have in administering pet policies in public housing developments for the elderly or persons with disabilities. At this time, HUD does not plan to publish another proposed rule.

Comment: HUD's pet rules should be combined. HUD should integrate the proposed public housing pet rules (24 CFR part 960) with the pet rules for pet ownership for the elderly or persons with disabilities (24 CFR part 5).

Response: The pet rules for the elderly or persons with disabilities are placed in part 5 because they apply both to HUD's public housing and assisted housing programs. Rather than repeating them in a number of different CFR sections, HUD places such cross-cutting rules in part 5. This rule, however, belongs in part 960 because it only applies to public housing.

Comment: HUD should use the Massachusetts Guidelines for State-Aided Elderly Housing to develop its pet regulations. These guidelines provide a good basis to develop pet regulations.

Response: While elements of the Massachusetts Guidelines may be appropriate for certain PHAs, other PHAs, in consultation with their residents through the Annual Plan process under 24 CFR part 903, may wish to institute different or varying guidelines as locally appropriate. Indeed, section 31 of the Act requires that pet policies comport with local law and with the policies established in the Plan for each PHA, and these local laws and plans may vary. Therefore, rather than requiring each PHA to implement the specific Massachusetts Guidelines, HUD has determined that it is important and in accordance with Congressional intent to preserve local options. At a later date HUD may provide to PHAs, as technical assistance, examples of pet policies for PHAs to consider in developing their pet rules.

Comment: Clarify formal procedures for adopting pet rules. This rule should state formal procedures for adopting and changing pet rules as do §§ 5.350 and 5.353 of HUD's pet regulations for developments for the elderly and persons with disabilities.

Response: Because information regarding PHA's requirements relating to pet ownership are to be included in the PHA's Annual Plan under 24 CFR part 903, which covers HUD review and approval requirements, additional formal requirements are not necessary, except that HUD has revised the rule to specify that PHAs must start including information regarding their pet policies in their PHA Plans beginning on January 1, 2001.

Comment: The rule should impose requirements on assistance animals for persons with disabilities. The final rule should impose requirements on assistance animals for persons with disabilities in public housing complexes that are not complexes designated for the elderly or persons with disabilities, such as certification that the household contains a person with disabilities that would benefit from the assistance of the animal, that the animal has been appropriately trained, and that the animal actually provides assistance to the person with disabilities.

Response: The statute, legislative history and the proposed rule all indicate that section 31 intends to regulate only ''common household pets.'' Therefore, regulation of animals that provide assistance, support, or service to persons with disabilities is beyond the scope of this rulemaking. In this regard, HUD believes that animals that provide assistance, service or support to persons with disabilities, and are needed as a reasonable accommodation to such individuals, are not ''common household pets.'' Rather, they are assistive animals, necessary to provide the individual with an opportunity to use and enjoy the dwelling to the same extent as residents without disabilities. Section 960.705 of the final rule clarifies that the provisions of subpart G and any PHA pet policies established under subpart G do not apply to such animals.

Comment: Because pet ownership policies will be approved by HUD staff through the PHA Plan approval process, HUD should conduct a ''minimalist'' review of PHA pet policies. This rule should provide that HUD will conduct this minimalist review of PHA pet policies.

Response: The only review of PHA pet policies contemplated by this regulation is through the PHA Annual Plan process under 24 CFR part 903. Therefore, no change to the regulation is necessary as a result of this comment.

Comment: Certain terms should be defined in the rule. Some commenters requested that the rule define the term ''common household pet.'' One commenter asked that the term ''responsibly'' (used in § 960.707(a)(1)) be defined to ensure a common understanding among PHAs. Another commenter stated that the term should not be defined since it is not defined in section 31 of the Act. Other commenters stated that the final rule should define the concept of ''nominal fee'' as used in § 960.707(b)(1). Another commenter stated that the rule should clarify what the word ''reasonable'' means in § 960.707(b).

Response: Because of variations among local communities, HUD agrees that the regulation should not define these terms. Each PHA should define ''allowable household pets,'' the elements of ''responsible pet ownership,'' the concept of ''nominal fee,'' and what regulations are ''reasonable'' as part of its pet policies that will be part of the PHA Plan and hence developed in consultation with the Resident Advisory Board. Permitting PHAs to define terms is consistent with the administration of pet rules in public housing developments for the elderly and persons with disabilities.

Comment: Banning of dangerous animals. HUD should neither encourage nor permit PHAs to ban specific breeds of dogs. The final rule should require that an animal behaviorist make any final decision that an animal is dangerous. The final rule should either define the term ''dangerous animal'' or provide a list of dangerous animals.

Response: Section 31 of the Act provides that a PHA's reasonable requirements may include prohibitions on types of animals that are classified as dangerous. Thus, the rule contains a provision implementing that statutory provision. In some cases, State or local law may govern the classification and treatment of ''dangerous animals'' and whether to ban specific breeds; in those cases, the PHA's pet policy must be consistent with State or local law.

Pet Deposits

Comment: State and local law should govern pet deposits. A number of commenters stated that PHAs should be allowed to hold pet deposits in accordance with State and local laws. Another commenter opposed the proposed rule on the basis that HUD's proposed regulation could have the effect of preempting local laws that give pet owners greater protection.

Response: Because most States already have laws regulating such deposits, HUD agrees that State or local laws relating to pet deposits or security deposits (if applicable) should apply, and has revised the rule accordingly.

Comment: Pet deposits should not have to be placed in escrow accounts. The rule should not require escrow accounts or interest because the administrative burden outweighs the small amounts of funds involved. The pet rule for housing for the elderly and persons with disabilities does not require them, and payment of interest is not required by the statute.

Response: Section 31 of the Act permits PHAs to charge a non-refundable nominal fee to cover the reasonable operating costs to the development related to the presence of pets, a refundable pet deposit to cover additional costs not otherwise covered, or both. Thus, PHAs have the discretion to establish fees, deposits, or both. With respect to deposits, legislative history indicates that Congress expects such accounts to be interest-bearing. However, rather than trying to impose a new scheme in an area where States generally already have laws and regulations governing either pet deposits, security deposits, or both, HUD has revised the proposed rule to state that local legal requirements will govern any such escrow accounts as to interest and other matters.

Comment: Pet deposits should be used for specified purposes. One commenter stated that accrued interest on pet deposits should be placed in the PHA's resident services and activities fund. Another comment stated that the final rule should authorize PHAs to use all pet deposits and nominal fees for costs of maintenance related to pet ownership.

Response: Section 31 specifies the uses of pet fees and deposits. The statute indicates that the purpose of fees is to cover the ''reasonable operating costs to the project relating to the presence of pets,'' and deposits are for additional costs not otherwise covered. HUD believes that, in accordance with the overall purpose of this section, ''additional costs not otherwise covered'' refers to pet-related costs not covered by the nominal fee, not overall maintenance or operating costs of the development, which are covered by other HUD funding. PHAs may use pet deposits and interest for items not covered by the fee, which HUD interprets to refer to costs for damage attributable to a particular pet and not covered by the fee, and may use nominal pet ownership fees for purposes of maintenance of the development related to pet ownership.

PHA Requirements for Pet Ownership

Comment: Certain requirements should be included or mandated in the rule. A number of commenters sought to have various specific requirements added to the rule. These include the following described in this comment.

The following recommendations should be added to the rule to provide sufficient guidance: Mandate the spaying and neutering of dogs and cats; establish pet committees in all housing complexes that will be responsible for enforcement of the pet rules; ensure that pet rules protect the safety, health and well-being of pets as well as people in the community; and prohibit PHAs from requiring inhumane procedures, such as debarking or declawing.

A Pet Ombudsman should be appointed to oversee Federal pet policies; pets found roaming at large should be ''microchipped'' for future identification; residents should be allowed to temporarily keep foster pets received from an animal welfare agency or rescue group for companion animals.

Additional comments were as follows:

Outside pets should have adequate fencing and shelter;

The rule should prohibit outdoor pets;

The rule should prohibit or allow PHAs to prohibit pets based on climate-related factors;

There should be a limit on the number of different species of pet in a unit;

The rule should prohibit specific pets, such as certain kinds of dogs, birds, non-human primates and pot-bellied pigs;

The rule should require that dogs and cats be on leashes when outside;

The rule should prohibit the tethering or chaining of any animals;

PHA should have the right to take certain actions if there is evidence of an animal in distress, including entry into the unit, impoundment of the animal, and alerting authorities;

The rule should impose a limitation on the number of pets allowed per unit;

The rule should require that pets wear identification at all times;

The rule should prohibit tail and ear docking;

The rule should require that a PHA's pet regulations along with a telephone number to report violations should be posted;

The rule should require that all pets be spayed and neutered;

The rule should not allow requirements that pets be spayed and neutered; and

The rule should include specific requirements for ensuring the health of pets.

Response: Under the rule, PHAs can institute reasonable requirements addressing any or all of these issues. Because many commenters on the specific issue of spaying and neutering requirements made strong arguments that such requirements are desirable as policy, the final rule specifies that PHAs have the discretion to adopt such requirements.

HUD also agrees with a number of comments regarding ''debarking'' pets, and so has added a provision in the final rule to prohibit a PHA from requiring that any pet's vocal chords be removed. This matches a provision of the current regulations regarding pets in public housing developments for the elderly and persons with disabilities.

As to the concept of an ombudsman, to the extent disputes occur, HUD expects PHAs to settle disputes with their residents reasonably and in accordance with the law and regulations. HUD field staff can assist by answering questions.

In addition, the statute and rule require residents to maintain pets in accordance with State and local public health, animal control, and anti-cruelty laws and regulations, most of which address health and safety concerns.

Comment: Rule should make clear that public housing residents must obtain PHA approval before owning a pet. The final rule should clarify this point.

Response: As one of its ''reasonable requirements,'' a PHA may now require that pet owners register their pets. Such registration may include such matters as, for example, the certification of a licensed veterinarian or a State or local authority (or agent of such authority) empowered to inoculate animals, that the pet has received all inoculations required by applicable State and local law; information sufficient to identify the pet and to demonstrate that it is a common household pet; and the name, address and telephone number of one or more responsible parties who will care for the pet if the owner is unable to do so for any reason.

Comment: Eliminate certain language from the rule. Section 960.707(b)(4) of the proposed rule reads ''[Reasonable requirements may include] * * * (4) Restrictions or prohibitions based on size and type of building or project or other relevant conditions.'' One commenter states that the phrase ''or prohibitions'' is overly broad and could be used to negate the intent of section 31. Another commenter states that the phrase ''or other relevant conditions'' is too vague.

Response: The referenced language is statutory and so is retained in the final rule (see section 31(b)(4) of the Act). Since the overall intent of the statute is to permit pet ownership in public housing, this language should not be used to negate the intent of the rule, and PHAs should apply this section consistently with that intent.

Comment: The final rule should provide that PHAs may demand proof of liability insurance or evidence of financial responsibility as a condition of pet ownership. The final rule should include this as a reasonable requirement in § 960.707(b).

Response: The lower-income population served by PHAs is not likely to have access to liability insurance. At best, such insurance would pose a further financial hardship on PHA residents. When section 31 refers to ''reasonable requirements,'' it means reasonable requirements relating to pet ownership. Reasonable requirements include, for example, limiting the number of pets per unit and prohibiting dangerous animals (see sections 31(b)(2) and (3) of the Act). However, a requirement to have liability insurance could well make it impossible for most PHA residents to have pets, thus frustrating the intent of the statute. Liability insurance, therefore, is not a ''reasonable requirement'' within the intent of section 31. Thus, the PHA may not require evidence of liability insurance.

Comment: PHAs should be able to follow the pet rules for private multifamily housing. PHAs should not be required to allow pets where private housing of a similar density would not. PHAs must not be forced to accept conditions that go beyond that which is standard in the private market. The final rule must give PHA's the authority to designate areas for pets and areas where pets are not allowed.

Response: Section 31(d) of the Act requires HUD to promulgate regulations requiring PHAs to permit pet ownership, and this fact distinguishes PHAs from private housing in respect to pet ownership. The statute and § 960.707(b)(4) of the regulations permit ''restrictions or prohibitions based on the size and type of building * * * or other relevant conditions.'' Where appropriate to local conditions, and in consultation with the Resident Advisory Board as part of the PHA's Plan, an individual PHA could institute some pet-free areas. However, HUD expects PHAs, consistent with statutory intent, to generally allow pet ownership.

Comment: Rule needs to address adequate care of pets. In the final rule, HUD should provide guidance regarding adequate care of pets.

Response: The rule refers to applicable State and local animal control and anti-cruelty laws. Such laws provide guidance relevant in each jurisdiction regarding animal welfare. Also, PHAs and pet owners may obtain information from organizations, such as local humane societies.

Comment: The rule should allow individual developments to vote on whether or not to allow pets. Allowing residents to vote on whether to allow pets could be considered a ''reasonable requirement'' under § 960.707(b).

Response: The purpose of section 31 of the Act is to permit pet ownership by those residents who wish to own pets and comply with reasonable requirements. Reasonable requirements include, for example, limiting the number of pets per unit and prohibiting dangerous animals (see sections 31(b)(2) and (3) of the Act). Legislative history indicates that pet-free areas could be instituted, for example, to accommodate residents who are allergic to pets (see H.R. Report No. 105–76, at 132). In other words, the reasonable requirements contemplated by the statute impose conditions under which pets may be owned, and have some relation to the proper care of the pet or the welfare of the community. Allowing those residents who prefer not to have pets to prohibit all residents from having pets on the basis of a vote would go beyond imposing reasonable conditions on pet ownership and would amount to a contravention of the statutory intent to allow pet ownership. Of course, residents of particular housing could argue to their PHA that there are characteristics of that housing which make various limitations on pet ownership appropriate.

Comment: The rule should provide guidance regarding unit size. Section 960.707(b)(2) provides for limitations on the number of animals in a unit, based on unit size. The commenters state that PHAs could effectively prohibit all pet ownership by characterizing all of their units as too small to accommodate pets. Thus, guidelines from HUD regarding unit size and number of pets are needed.

Response: Information regarding the PHA's pet policy must be part of the PHA's Plan under 24 CFR part 903, which is subject to public hearing, Resident Advisory Board consultation, and HUD review. As a result, HUD believes that PHAs will promulgate reasonable pet rules.

Comment: Only certain animals should be allowed as pets. One comment stated that farm animals, exotic pets, breeding animals, wild or feral animals, and dangerous animals should not be allowed. Another

comment stated that only cats and dogs should be allowed.

Response: As to the keeping of farm, exotic, and dangerous animals, many States and localities have laws regarding such animals, with which PHAs will have to comply. Also, as to types of animals not covered by such laws, PHAs and Resident Advisory Boards will decide which animals are appropriate as pets as part of the PHA Plan process.

IV. Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule provides for pet ownership in public housing, and allows PHAs to collect pet deposits to defray the costs to the development of pet ownership.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969 at the proposed rule stage. That Finding remains applicable to this rule and 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 the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Federalism Impact

Executive Order 13132 (entitled ''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 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Regulatory Planning and Review

The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866 (captioned ''Regulatory Planning and Review'') and determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing.

For the reasons discussed in the preamble, HUD amends 24 CFR part 960 as follows:

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

1. The authority citation for 24 CFR part 960 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

2. Add subpart G to read as follows:

Subpart G—Pet Ownership in Public Housing

Sec.
960.701 Purpose.
960.703 Applicability.
960.705 Animals that assist, support, or provide service to persons with disabilities.
960.707 Pet ownership.

Subpart G—Pet Ownership in Public Housing

§ 960.701 Purpose.

The purpose of this subpart is, in accordance with section 31 of the United States Housing Act of 1937 (42 U.S.C. 1437z–3), to permit pet ownership by residents of public housing, subject to compliance with reasonable requirements established by the public housing agency (PHA) for pet ownership.

§ 960.703 Applicability.

This subpart applies to public housing as that term is defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)), except that such term does not include public housing developments for the elderly or persons with disabilities. Regulations that apply to pet ownership in such developments are located in part 5, subpart C, of this title.

§ 960.705 Animals that assist, support, or provide service to persons with disabilities.

(a) This subpart G does not apply to animals that assist, support or provide service to persons with disabilities. PHAs may not apply or enforce any policies established under this subpart against animals that are necessary as a reasonable accommodation to assist, support or provide service to persons with disabilities. This exclusion applies to such animals that reside in public housing, as that term is used in § 960.703, and such animals that visit these developments.

(b) Nothing in this subpart G:

(1) Limits or impairs the rights of persons with disabilities;

(2) Authorizes PHAs to limit or impair the rights of persons with disabilities; or

(3) Affects any authority that PHAs may have to regulate service animals that assist, support or provide service to persons with disabilities, under Federal, State, or local law.

§ 960.707 Pet ownership.

(a) *Ownership Conditions.* A resident of a dwelling unit in public housing, as that term is used in § 960.703, may own one or more common household pets or have one or more common household pets present in the dwelling unit of such resident, subject to the reasonable requirements of the PHA, if the resident maintains each pet:

(1) Responsibly;

(2) In accordance with applicable State and local public health, animal control, and animal anti-cruelty laws and regulations; and

(3) In accordance with the policies established in the PHA Annual Plan for the agency as provided in part 903 of this chapter.

(b) *Reasonable requirements.* Reasonable requirements may include but are not limited to:

(1) Requiring payment of a non-refundable nominal fee to cover the reasonable operating costs to the development relating to the presence of pets, a refundable pet deposit to cover additional costs attributable to the pet and not otherwise covered, or both;

(2) Limitations on the number of animals in a unit, based on unit size;

(3) Prohibitions on types of animals that the PHA classifies as dangerous, provided that such classifications are consistent with applicable State and local law, and prohibitions on individual animals, based on certain factors, including the size and weight of animals;

(4) Restrictions or prohibitions based on size and type of building or project, or other relevant conditions;

(5) Registration of the pet with the PHA; and

(6) Requiring pet owners to have their pets spayed or neutered.

(c) *Restriction.* A PHA may not require pet owners to have any pet's vocal chords removed.

(d) *Pet deposit.* A PHA that requires a resident to pay a pet deposit must place the deposit in an account of the type required under applicable State or local law for pet deposits or, if State or local law has no requirements regarding pet deposits, for rental security deposits, if applicable. The PHA shall comply with such applicable law as to retention of the deposit, interest, and return of the deposit or portion thereof to the resident, and any other applicable requirements.

(e) *PHA Plan.* Unless otherwise provided by § 903.11 of this chapter, Annual Plans are required to contain information regarding the PHA's pet policies, as described in § 903.7(n) of this chapter, beginning with PHA fiscal years that commence on or after January 1, 2001.

Dated: June 30, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–17023 Filed 7–7–00; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Monday,
July 10, 2000

Part VII

Department of Transportation

Federal Railroad Administration

Federal Transit Administration

49 CFR Parts 209 and 211

Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems; Notice and Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Federal Transit Administration

[FRA Docket No. FRA–1999–5685, Notice No. 6]

RIN 2130–AB33

Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems

AGENCIES: Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Policy statement.

SUMMARY: On May 25, 1999, FRA and FTA published a proposed joint statement of agency policy concerning safety issues related to light rail transit operations that take place, or are planned to take place, on the tracks of the general railroad system. 64 FR 59046. In the same docket, on November 1, 1999, FRA published a separate proposed statement of policy providing details on its railroad safety jurisdiction and a detailed explanation of issues that will be addressed in its waiver process related to shared use of the general system. FRA also addressed the process of obtaining waivers of its safety regulations. After consideration of the nearly 50 written comments received and discussions of these issues in a variety of public forums, the agencies now issue this final joint statement of agency policy that explains generally how the two agencies intend to coordinate use of their respective safety authorities with regard to such shared-track operations. FRA is separately publishing today its final Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Operations, which includes a discussion of the comments received in this docket.

FOR FURTHER INFORMATION CONTACT: Gregory B. McBride, Deputy Chief Counsel, FTA, TCC–2, Room 9316, 400 Seventh Street, SW., Washington, DC 20590 (telephone: (202) 366–4063); and Daniel C. Smith, Assistant Chief Counsel for Safety, FRA, RCC–10, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6029).

Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems

In many areas of the United States, local communities are considering, planning, or developing light rail, street-level transit systems similar to those now in operation in Portland, Oregon; Sacramento, California; Dallas, Texas; San Diego, California; Baltimore, Maryland; and Salt Lake City, Utah. Patterned on the trolleys that operated along the streets of hundreds of American cities and towns earlier in the century, these newer light rail systems promote more livable communities by serving those who live and work in urban areas without increasing congestion on the nation's already crowded highways.

Some of these existing light rail systems, such as those in San Diego, Baltimore, and Salt Lake City, like some of those now contemplated for the future, would in addition to service provided along community streets, take advantage of underutilized urban freight trackage to provide service that, in the absence of the existing right of way, would be prohibitively expensive. These potential passenger services usually envision light rail operations during the day and freight operations during the night.

FRA has long regulated the nation's railroads for safety purposes. FRA's railroad safety jurisdiction extends to all types of railroads except for ''rapid transit operations in an urban area that are not connected to the general railroad system of transportation.'' 49 U.S.C. 20102. A complete discussion of FRA's safety jurisdiction can be found at 49 CFR part 209, Appendix A. In this context, ''rapid transit operations'' refers to rail systems that are devoted in substantial part to moving people from point to point within a city's boundaries. Such systems may use heavy subway and elevated, or light rail, equipment and will be covered in this statement by the general terms ''local rail transit'' or ''light rail transit.'' FRA's safety jurisdiction covers all commuter railroad operations (even if they use equipment that might be considered light rail or transit equipment) without regard to their general system connections. This statement of policy does not apply to commuter railroad operations.

Until the 1990's, there was no Federal program for addressing the safety of local rail transit systems that are not subject to FRA's safety jurisdiction (i.e., those not connected to the general railroad system). However, faced with the growing movement to develop new rail transit systems, Congress addressed the safety of such systems in the Intermodal Surface Transportation Efficiency Act of 1991, requiring that FTA issue regulations requiring that states having rail fixed guideway mass transportation systems ''not subject to regulation by the Federal Railroad Administration'' establish a state safety oversight program. 49 U.S.C. 5330. Those regulations, which appear at 49 CFR part 659, provide that they apply where FRA does not regulate. Thus, Congress has now defined the Federal role with respect to the oversight of both railroads subject to FRA's safety jurisdiction and rail transit systems not connected to the general railroad system.

The primary issue addressed by this policy statement is the means by which FRA and FTA propose to coordinate their safety programs with regard to rail transit systems that share tracks with freight railroads. Although compatible in terms of track gage, these two forms of rail service are incompatible in terms of equipment. A collision between a light rail transit vehicle with passengers aboard and heavy-duty freight or passenger equipment would likely result in catastrophe.

In general, FRA provides safety oversight of all railroad operations except rapid transit operations that have no significant connection to the general railroad system, such as the Chicago Transit Authority (CTA) in Chicago, the Washington Metro, and the subway systems in New York, Boston, and Philadelphia. As noted, the safety rules of FRA and FTA are mutually exclusive. If FRA regulates a rail system, FTA's rules on state safety oversight do not apply. Conversely, if FRA does not regulate a system, FTA's rules do apply, assuming that the system otherwise meets the definition of a ''rail fixed guideway system'' under 49 CFR 659.5.

This joint statement is intended to: (1) Explain the nature of the most important safety issues related to shared use of the general railroad system by conventional and rail transit equipment; (2) summarize the application of FRA and FTA safety rules to such shared-use operations; and (3) help transit authorities, railroads, and other interested parties understand how the safety programs of the two agencies will be coordinated.

1. Safety Issues Related to Shared Use of the Tracks of the General System

The expansion of rail passenger transportation promises significant benefits to America's communities in

terms of reduced highway congestion, reduced pollution, lower commuting times, and increased economic opportunities. However, the expansion of rail transit systems operating over portions of conventional railroad trackage poses major safety issues that must be addressed if such service is to be provided within a suitably safe transportation environment.

Potential for a Collision

The most important safety issue related to shared use of general railroad system trackage is the potential for a catastrophic collision between conventional rail equipment and rail transit equipment of lighter weight. Because of the significantly greater mass and structural strength of conventional equipment, the two types of equipment are simply not designed to be operated in a setting where there is any appreciable risk of their colliding.

Shared Use of Highway-Rail Grade Crossings

For decades, the greatest cause of death associated with railroading in America has been collisions between railroad vehicles and highway vehicles at grade crossings. Unlike traditional rapid transit operations, existing and contemplated shared-trackage light rail operations on the general system will typically involve train movements through highway grade crossings. To the extent train movements through grade crossings increase, the collision exposure to the highway user increases. We want to ensure that local rail transit operations are designed and operated to address these serious risks and to prevent grade crossing collisions involving light rail equipment.

A related issue is the prevalence of death and serious injury to trespassers on railroad property. Trespasser fatalities have recently outpaced grade crossing accidents as the leading cause of death on the nation's railroads. To the extent that shared use of general system trackage results in a substantial increase in the number of pedestrians crossing by foot in the path of trains, the potential for additional deaths to trespassers is very real and should be addressed in planning these operations.

Shared Infrastructure

Light rail operations on general railroad system tracks will affect and be affected by the track, bridges, signals, and other structures on the line. The light rail and conventional systems may also share a communications system. The responsibility for operating and maintaining this shared infrastructure may vary according to the agreements reached between the parties. However, even if the light rail operator has no direct responsibility for maintenance, there will need to be sufficient coordination to alert the light rail operator to related safety problems and to ensure the light rail operator conveys relevant information (*e.g.,* readily apparent track defects or signal failures) to the party responsible for operation and maintenance.

Employee Safety

Employees who operate trains on general system track, control movements over that system, or maintain its infrastructure are provided certain protections under the Federal railroad safety laws. Light rail employees will be entitled to appropriate protections during shared-track operations. In addition, the light rail operators will need to observe rules designed to protect employees of other organizations who may be working along the right-of-way.

2. Approaches to Various Forms of Shared Use

Operations on the General System

Local rail transit operations conducted over the track of the general system become part of that system and necessitate FRA safety oversight of rail transit operations to the extent of such shared use. This does not mean that all of FRA's regulations will be applied to all aspects of these operations. First, FRA has no intention of overseeing rail transit operations conducted separate and apart from general system tracks, *i.e.,* the street portion of that service. (As noted above, FRA regulates commuter operations without regard to their general system connections.) Second, FRA anticipates granting appropriate waivers of its rules to permit shared use of general system track by light rail and conventional equipment where the applicant transit systems and railroads commit to alternative safety measures and FRA finds that those measures will ensure safety. FRA has now granted two such waivers: Utah Transit Authority on December 2, 1999 and the New Jersey Transit Corporation on December 3, 1999, and is currently evaluating a waiver request filed by the Santa Clara Valley Transportation Authority.

Where complete temporal separation between light rail and conventional operations is achieved, the risk of collision between the two types of equipment can be minimized or eliminated. Temporal separation involves operating conventional and light rail equipment at completely distinct periods of the day (in San Diego, for example, conventional rail movements occur only between 1:30 a.m. and 4 a.m.) and establishing procedures to ensure strict observation of the defined operating windows. Under these circumstances, FRA will grant necessary waivers concerning rules related to design of the passenger equipment, although other safety concerns (*e.g.*, highway grade crossings) not addressed by temporal separation may not permit waivers. As FRA's separate statement of policy makes clear, FRA may permit simultaneous joint use of track by conventional and light rail equipment where the petitioner meets the steep burden of demonstrating that alternative safety measures will reduce the risk of a collision between these types of equipment to an acceptable level.

Operations Outside the Shared-Track Area

Where local rail transit operations consist of segments that involve shared track with conventional equipment connected to segments that do not involve shared track (*e.g.,* street railway segments), FRA does not currently intend to exercise its jurisdiction over operations outside the shared-track area. Instead, FRA will coordinate with the state oversight agency to ensure effective and non-duplicative monitoring of the safety of the different segments of the operation. FRA will make every effort in its waiver process to give due weight to elements of the operation's system safety plan that carry over into the shared-track portion of the system.

Operations Within a Shared Right-of-Way

Although this policy statement addresses shared-track operations, it is important to also acknowledge the situations in which light rail transit operations share a right-of-way, but no trackage with conventional railroads. An example is a light rail system whose tracks run parallel to but between the tracks of a freight line. Where such systems share highway-rail grade crossings with conventional railroads, FRA expects both systems to observe its rules on grade crossing signals that, for example, require prompt reports of warning system malfunctions. In addition, and apart from their safety regulatory programs, FRA and FTA are eager to coordinate with rapid transit agencies and railroads wherever there are concerns about sufficient intrusion detection and related safety measures designed to avoid a collision between rapid transit trains and conventional equipment.

Operations Through a Rail-Rail Crossing at Grade and Other Limited Connections

Similarly, where a rail transit system crosses a conventional railroad at grade, but has no other connection to the general system, FRA and FTA will coordinate with the transit system and railroad to ensure safety at the crossing. FRA does not consider a switch that merely permits the transit system to receive shipments for its own use a connection significant enough to warrant application of FRA's rules.

3. FTA and FRA Safety Partnership

FTA and FRA have been working closely together for several years to ensure proper coordination of their safety programs. In October 1998, FRA and FTA entered into an agreement designed to enhance their efforts in identifying and resolving safety issues in rail-related projects funded by FTA. Under the agreement, the agencies agreed to take actions that will ensure that FRA's rail safety expertise is brought to bear on safety issues inherent in commuter rail grant proposals early in the planning and development process.

Coordination on Rail Safety Waiver Requests

Light rail transit operators who intend to share track of the general railroad system with conventional equipment will either have to comply with FRA's safety rules or obtain a waiver of appropriate rules. FRA may grant a waiver ''if the waiver is in the public interest and consistent with railroad safety.'' 49 U.S.C. 20103(d). FRA intends to make its waiver process as smooth and comprehensive as possible. FTA will assist FRA in that effort. In its separate final statement of policy issued today, FRA provides detailed guidance on what factors the petition should address.

Note: FRA and FTA have grave concerns about whether, given their structural incompatibility, light rail and conventional equipment can ever be operated safely on the same trackage at the same time. In the event that petitioners nevertheless seek approval of simultaneous joint use, the petitioners will face a steep burden of demonstrating that extraordinary safety measures will be taken to adequately reduce the likelihood and/or severity of a collision between conventional and light rail equipment to the point where the safety risks associated with joint use would be acceptable.

Like all waiver petitions, a Petition for Approval of Shared Track is reviewed by FRA's Railroad Safety Board. FTA has a non-voting liaison to that board who participates in the board's consideration of all such petitions. This close cooperation between the two agencies ensures that FRA benefits from the insights, particularly with regard to technological, operational, and financial issues, that FTA can provide about light rail operations, as well as from FTA's knowledge of and contacts with state safety oversight agencies. This working relationship also ensures that FTA has a fuller appreciation of the safety issues involved in each specific shared use operation and a voice in shaping the safety requirements that apply to such operations.

In general, the greater the safety risks inherent in a proposed operation the greater will be the mitigation measures required. It is the intention of FTA and FRA to maintain the level of safety typical of conventional rail passenger operations while accommodating the character and needs of light rail transit operations.

FRA and FTA believe that they can give light rail operators a high degree of confidence that FRA will provide the waivers they need to operate on a time-separated basis in shared-use situations, as already demonstrated in the three cases cited above. To facilitate the waiver process, FRA includes in its final statement of policy issued today a detailed statement of the rules light rail operators should expect to comply with and those rules from which they can expect to receive waivers, provided that the planned light rail operations will be wholly separated in time from conventional rail operations. With this information, light rail operators can plan and design their projects in such a way that they can be confident, absent unusual facts about a particular project presenting some atypical safety hazard, of receiving the waivers needed to operate.

In its petition, the light rail operator may want to certify that the subject matter addressed by the rule to be waived is addressed by the system safety plan and that the light rail operation will be monitored by the state safety oversight program. That is likely to expedite FRA's processing of the petition. FRA will analyze information submitted by the Petitioner to demonstrate that a safety matter is addressed by the light rail operator's system safety plan. Where FRA grants a waiver, the state agency will oversee the area addressed by the waiver, but FRA will actively participate in partnership with FTA and the state agency to address any safety problems. If the conditions under which the waiver was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety.

Conclusion

Expanded use of existing railroad lines to provide increased transportation opportunities for passengers in metropolitan areas is a development that FTA and FRA strongly wish to encourage. Working together, the two agencies intend to ensure that these efforts go forward smoothly and in a way that guarantees that the blending of light rail and conventional rail operations continues their excellent safety records.

Issued in Washington, DC, on June 30, 2000.

Jolene M. Molitoris,

Federal Railroad Administrator.

Nuria I. Fernandez,

Acting Federal Transit Administrator.

[FR Doc. 00–17209 Filed 7–5–00; 10:43 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209 and 211

[FRA Docket No. FRA–1999–5685, Notice No. 7]

RIN 2130–AB33

Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule and policy statement.

SUMMARY: FRA and the Federal Transit Administration (FTA) have jointly developed a policy concerning safety issues related to light rail transit operations that share use of the general railroad system track with conventional trains. That policy, published elsewhere in today's **Federal Register**, describes how the two agencies will coordinate use of their respective safety authorities over shared track operations. FRA is issuing its own separate policy statement to describe the extent of its statutory jurisdiction over railroad passenger operations (which covers all railroads except urban rapid transit operations not connected to the general railroad system) and explain how it will exercise that jurisdiction. The statement also explains FRA's waiver process and discusses factors that should be addressed in any petition submitted by light rail operators and other railroads seeking approval of shared use of general railroad system track.

DATES: This statement of policy is effective July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel C. Smith, Assistant Chief Counsel for Safety, FRA, RCC–10, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6029) or David H. Kasminoff, Trial Attorney, FRA, RCC–12, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6043).

Introduction

DOT strongly encourages increased use of railroads to serve the nation's passenger transportation needs. Many communities are using or planning to use railroad lines on which conventional freight and passenger trains operate to move commuters and other passengers in ''light rail'' vehicles. This development holds great promise for enhancing transportation alternatives in metropolitan and suburban areas. However, this shared use of conventional rail lines, which are within FRA's broad safety jurisdiction, also poses some significant safety issues. FTA provides a substantial share of the funding for many of these passenger operations, some of which straddle the jurisdictional line between FRA's and FTA's statutory safety authority. Therefore, FRA and FTA have decided to explain jointly, in a notice published elsewhere in today's **Federal Register**, how they will work to ensure that they exercise jurisdiction in a complementary way over these shared use operations. In this notice, FRA explains in greater detail the extent of its safety jurisdiction and how it will exercise that authority in the shared use context. FRA also explains how those light rail operations that may desire waivers of certain of FRA's rules may go about seeking such waivers.

This notice does not amend any of FRA's substantive safety rules or impose any regulatory burdens not already imposed by those rules. Those rules cover a wide range of safety issues such as equipment, track, signals, grade crossings, and operating practices. By their own terms, they already apply to at least those rail operations, like those addressed here, that occur on lines where conventional trains operate. Nothing in this statement expands the applicability provisions of those rules. The only rules that FRA is amending are its statement of policy on safety jurisdiction, found in appendix A to 49 CFR part 209, and 49 CFR part 211, to which FRA is adding a new appendix containing its statement of policy concerning waivers related to shared use of the general system. FRA believes it is important to ensure that the agency's current thinking on these subjects can be readily located in the CFR.

Although agencies are not required to provide notice and an opportunity to comment on interpretive rules and statements of policy, FRA did so here to ensure that it had the benefit of the views of interested parties in developing its policy. Because of the substantial overlap in subject matter between FRA's proposed statement of policy (published November 1, 1999, at 64 FR 59046) and the joint FRA/FTA statement (published May 25, 1999, at 64 FR 28238), we concluded it made sense to have the comment periods on both statements run concurrently. Therefore, we extended the original comment period on the joint statement to coincide with the comment period on this statement (64 FR 58124). Then, based on a request from the major organization representing rail commuter and transit operations, we extended the comment deadline again, to February 14, 2000. We think this public process gave all concerned ample opportunity to develop and convey their views, and we have spent a great deal of time reviewing the many comments we received.

I. Discussion of Comments

FRA received nearly 50 responses concerning its proposed statement of agency policy, including comments from: state and local governments and transportation authorities; transit agencies; transportation planners and consultants; citizen groups; a railroad labor union; the association representing the interests of conventional railroads; and the association representing the interests of the rail transit industry. Discussions follow with respect to the primary issues raised by the commenters. In light of the comments received, FRA has reconsidered some aspects of its proposed policy and has elected to adopt certain portions of the policy without substantive change from what FRA proposed.

The commenters addressed many of the important topics discussed in FRA's proposal, including the extent and exercise of FRA's jurisdiction, shared use of the general railroad system of transportation by light rail and conventional rail equipment, shared use of railroad rights of way by light rail and conventional rail equipment, and the nature of the waiver process involving shared-use operations. Several commenters applauded the agencies' efforts to clarify how FRA and FTA will exercise their respective authorities and provide guidance on how to use FRA's waiver process in this context. Many commenters had suggestions on how FRA could improve its expression of its policy, and a few simply opposed FRA's exercise of its jurisdiction, whether generally over light rail operations on the general system or specifically over their own operation. The major themes that emerged from FRA's review of the comments are as follows:

- FRA's proposed definitional distinction between ''commuter railroad'' and ''rapid transit,'' which involves determining the primary purpose of the operation and whether a substantial portion of the operation is devoted to moving people within a city's boundaries, is viewed by some commenters as improperly based in FRA's statutory authority or too vague.

• FRA should establish an administrative process to resolve jurisdictional questions, especially those involving light rail projects still in the planning stages.

• The ''proposed restrictions'' (apparently some commenters did not realize that FRA's rules already apply to these operations) on shared use of the same trackage by light rail and conventional rail equipment are unjustified because of added compliance costs and the possible discouraging effect on the development and expansion of light rail transit service. Certain commenters asked FRA to emulate what they understand as the European approach and permit simultaneous joint use of the same trackage by light rail and freight trains.

• The shared-use waiver petition process is too burdensome to transit system operators.

• FRA needs to explain its regulatory role in cases of a light rail transit operation sharing a right-of-way but no trackage with a conventional railroad.

FRA Jurisdiction

General Issues

Several commenters, including the Maryland Transit Administration (MTA) and the New Starts Working Group (NSWG),[1] question the way in which FRA stated the extent of its jurisdiction over light rail operations in the proposed policy statement. MTA concludes that, under 49 U.S.C. 20101, FRA's jurisdictional authority must be based upon the nature of the operational connection between two systems, and that FRA's jurisdictional authority does not derive from a mere connection of a rapid transit operation to the general system. In response, FRA notes that the statute excludes only rapid transit systems ''not connected to'' the general system and does not elaborate on the characteristics of a sufficient connection, which could reasonably lead to the conclusion that any connection (even a ''mere'' one) will suffice. Nevertheless, as its proposed policy makes clear, FRA takes into account the nature of the connection in determining where to exercise its jurisdiction, and generally construes ''connected to'' as meaning that a rapid transit system is operated as a part of, or over the lines of, the general system. Of course, the general system may include tracks owned by the rapid transit system over which conventional passenger or freight trains operate.

The NSWG notes that its suggested changes to the policy statement do not ''offer a different view of FRA's jurisdiction than the one FRA itself offers.'' Instead, NSWG takes issue with particular aspects of how FRA has expressed its jurisdictional reach. NSWG contests FRA's suggestion that ''urban rapid transit'' is an exception to or special category of ''commuter and other short-haul railroad passenger operations'' instead of a completely separate category over which FRA lacks jurisdiction. The commenter does not wish to see the final policy statement imply a presumption that a rail operation is automatically a commuter or short-haul operation under FRA's jurisdiction unless it is an exceptional and special type of short-haul operation. FRA appreciates NSWG's close reading of 49 U.S.C. 20102, but believes that reading would not produce jurisdictional conclusions different from those rendered under FRA's reading. Whether ''rapid transit operations in an urban area'' are a type of ''short-haul railroad passenger service'' or a separate subset of the larger group of ''railroads,'' the statute excludes only one category of rapid transit operations, i.e., those that are ''in an urban area'' and not connected to the general system. Under either reading, a rail operation is presumptively covered by the statute unless the conditions of the exception apply.

The NSWG also requests that FRA correct some statements in the policy statement that NSWG believes blur the distinction between questions of jurisdiction and questions of the agency's discretionary enforcement. For example, under the section describing FRA's policy on the exercise of its safety jurisdiction, FRA states on page 59049 that it ''currently exercises jurisdiction over all railroad passenger operations in the nation except: (1) Urban rapid transit operations not operated on or over the general railroad system; . . . .'' The NSWG requests deletion of this statement from a discussion of the *exercise* of FRA's jurisdiction because FRA does not have statutory jurisdiction to regulate urban rapid transit operations not operated on or over the general railroad system. In addition, the NSWG objects to FRA's statement on page 59050 that ''it considers some connections to the general system to be insufficient to warrant *exercise* of its jurisdiction over a transit operation.'' (Emphasis added.) The NSWG finds this statement to be misleading, arguing that some rapid transit connections to the general system are so incidental and insufficient that FRA legally does not even ''have'' the jurisdiction over the rapid transit system that FRA says it is choosing not to ''exercise.''

In response, FRA notes that its final statement of agency policy concerning jurisdiction included in Appendix A to part 209 of the CFR, as amended by this notice, is perfectly clear as to where FRA believes it lacks jurisdiction. Nothing FRA has said suggests that FRA could exercise jurisdiction it does not have. Moreover, it is correct in literal terms to say that FRA does not exercise jurisdiction where it either lacks jurisdiction or chooses not to exercise it, and it is sometimes useful in certain contexts to combine those two categories to give the reader a clear picture of what FRA believes is outside of both the extent and exercise of its jurisdiction. For example, most of FRA's rules contain an applicability section that, among other things, excludes urban rapid transit systems not connected to the general system, but also contain the statutory definition of ''railroad'' that removes such operations from its jurisdiction. *See, e.g.,* 49 CFR 240.3 and 240.7. Based on NSWG's comment, however, we have taken pains in this document to distinguish the existence of jurisdiction from its exercise.

Definitions of Commuter Railroad and Rapid Transit

As FRA acknowledged in its proposal, the statutory definition of ''railroad'' uses the terms ''commuter or other short-haul railroad passenger service'' and ''rapid transit operations in an urban area'' without providing a definition of either type of service. For a transit system planning to build a new operation that will *not* be connected to the general railroad system, resolution of the question of whether the service will be labeled as commuter or rapid transit service is crucial.[2] Several commenters objected to FRA's definitions of commuter service and rapid transit in an urban area, and some suggested that FRA's definitions did not include certain factors they considered vital. However, except for one commenter that offered a definition of ''rapid transit,'' none of the commenters actually recommended specific alternative definitions.

The Southeastern Pennsylvania Transportation Authority (SEPTA) contends that FRA's definition of ''commuter railroad'' is arbitrary and

[1] NSWG indicates in its comments that it is a coalition of nearly 40 transit properties, cities, and private sector companies committed to the continued growth of rail transit in the United States.

[2] If the operation is a commuter railroad, FRA has jurisdiction even if there is no connection to any other railroad, and in fact considers the operation itself to be part of the general railroad system.

generic, and bears little or no relation to the underlying safety and policy concerns embodied in the statute. SEPTA expressed concern that under what it considers FRA's sweeping and somewhat vague definition of commuter service, the overwhelming majority of transit operations of all types operated by SEPTA (bus, trolley, streetcar, and rapid transit) could be viewed as possessing commuter characteristics. SEPTA stressed that discerning jurisdiction from whether a transit system's primary purpose is transporting commuters to and from work within a metropolitan area ignores not only various unrelated characteristics of the service, such as type of equipment and frequency of service, but also historical and widely held notions regarding the limited scope of Federal regulation of transit operations. In response, FRA notes that its proposed definitions were designed to give life to the sparse statutory language with a very keen sense of Congress' concerns. As explained at length in the proposed statement and as is clear from the statutory language, Congress specifically intended that FRA not make jurisdictional determinations based on the type of rail equipment being used but rather on the nature of the operation.

The Port Authority of New York & New Jersey (PATH) commented that FRA is ignoring the plain meaning of words when it states on page 59049 of the proposal that ''it is the nature and location of the [rapid transit] operation, not the nature of the equipment, that determines whether FRA has jurisdiction under the safety statutes.'' In this regard, PATH argues that FRA is creating an arbitrary distinction between ''commuter railroads'' and ''rapid transit operations'' by looking to the primary purpose of each type of service. PATH believes that since commuter railroads and rapid transit operations both transport people, the distinction between a ''commuter railroad'' transporting commuters to and from work within a metropolitan area and a ''rapid transit operation'' moving people from point to point within an urban area has no relevance to the determination of jurisdiction under the Federal railroad safety laws. Even assuming that the basis for the distinction is legally correct, PATH is concerned that FRA's decision as to what constitutes a ''substantial portion'' of an operation will be made in an arbitrary manner.

In response, FRA again notes that it believes that Congress intended that the type of equipment used in a rail operation not be a jurisdictional factor, and that the word ''railroad'' be read to include ''any form of nonhighway ground transportation that runs on rails or electromagnetic guideways.'' 49 U.S.C. 20102. That statute speaks of commuter ''service'' and rapid transit ''operations,'' not the equipment used in either service. Given the vast range of rail passenger equipment already in use in this country and available from suppliers around the world, basing jurisdictional decisions on the type of equipment is an impossible task. There is simply no rational basis for drawing clear jurisdictional lines between types of equipment or for thinking that Congress intended FRA to do so. More important, if equipment were the deciding factor, the equipment outside of FRA's jurisdiction could run anywhere at any time, including mixed in with conventional freight and passenger operations without regard to the attendant safety risks of collisions between equipment of vastly different structural strengths, and yet avoid FRA's regulatory program. There is no evidence of such an intent in the statute.

PATH also cites in its comments to the Transportation Research Board's (TRB) definition of rapid transit. TRB defines a rapid transit system as:

> A transit system that generally serves one urban area, using high speed, electrically powered passenger rail cars operating in trains in exclusive rights-of-way without grade crossings (Chicago is an exception) and with high platforms. The tracks may be in underground tunnels, on elevated structures, in open cuts, at surface level, or any combination thereof. Some local terms use for rail rapid transit are the elevated, the metro, the metropolitan railway, the rapid, the subway, the underground.

PATH did not provide a citation to the TRB document in which this definition appears. FRA notes that the definition begins in a circular fashion by defining rapid transit as a ''transit system'' without explaining what makes a system ''transit.'' Arguably, then, this definition merely describes the typical physical characteristics of a rail transit system without addressing what operational characteristics make it transit. The definition states that such systems generally operate in an urban area in ''exclusive rights-of-way without grade crossings.'' That is certainly true with regard to most systems FRA considers to be urban rapid transit. However, if FRA adopted this definition, the vast majority of the light rail systems (including those in operation in San Diego, Baltimore, and Salt Lake City) would be outside the definition of urban rapid transit (and, therefore, outside the sole statutory exception) so that even their street railway portions outside of the area of shared use would not be considered ''rapid transit.'' None of these light rail systems operates in an exclusive right-of-way, and they all have grade crossings. FRA's rationale for not exercising jurisdiction over their non-shared-use segments is that these are, at least in some cases, rapid transit systems that would be outside of FRA's jurisdiction but for their operation over the general system, and that the portions where use is not shared can be effectively regulated under FTA's program. Adoption of PATH's preferred definition would point in the direction of FRA's assertion of jurisdiction over those entire systems rather than just their shared use portions. Moreover, the TRB definition provides no help with reading the phrase ''commuter or other short-haul railroad passenger service'' in the statute. Under TRB's definition, a system would be considered rapid transit based on its physical characteristics even if its exclusive business was hauling commuters. Of course, FRA believes that Congress has clearly directed the agency to assert jurisdiction over commuter operations.

While we appreciate PATH's being the only commenter to offer an alternative to FRA's definitions, we find PATH's suggestion inappropriate for use in this context. FRA has struggled to develop definitions of these terms that embody what we believe was the intent of Congress. We think that Congress flatly wanted FRA to have and exercise jurisdiction over all commuter operations and to not have or exercise jurisdiction over urban railroad transit operations that stand apart from the general rail system. We doubt that Congress considered how difficult it may be to draw the line where systems have characteristics of both types of operations. We have based our definitions, as best we could, on the plain meaning and legislative history of the statutory terms as used in the railroad safety statutes. Also, in a non-safety context, Congress has listed certain specific rail systems as commuter authorities in the Northeast Rail Service Act of 1981 (''NERSA''), Pub. L. No. 97–35, 45 U.S.C. 1104(3).[3] In subsequently defining ''railroad'' in the safety statutes, Congress clearly intended to include ''commuter service.'' 49 U.S.C. 20102. We think the

[3] The statute provides that ''commuter authority'' includes the Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Maryland Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, and the Port Authority Trans-Hudson Corporation.

1981 statute is a useful guide as to Congress' concept of commuter service, at least with regard to the listed systems. The same committees of the same Congress produced both NERSA in 1981 and the 1982 safety legislation and used very similar terminology to refer to commuter operations, and the legislative history of the 1982 safety amendments expressly acknowledges what was then the recent transition of some commuter service to new commuter authorities, which NERSA had authorized. We see no reason to conclude that Congress intended that the particular systems it identified as commuter operations in 1981 be considered anything but commuter operations under the safety statutes. Therefore, we have amended our definition of commuter operations to include, at a minimum, the systems Congress listed in 1981. Of course, we recognize that the listed authorities could undertake new operations that differ substantially from those existing at the time of NERSA, and that the statute would not provide guidance with respect to such new and different operations.

We are also revising the definitions of ''commuter railroad'' and ''urban rapid transit'' to remove as a consideration whether ''a substantial portion'' of a system's operations is devoted to moving people from station to station within a city, and to focus instead on whether such service is a ''primary function'' of the system or ''an incidental function'' of its service. The ''substantial portion'' language suggested that there could be some numerical threshold of intra-urban service that could provide a bright line. Unfortunately, FRA is not aware of any such quantitative bright line, and must instead focus in a more qualitative way on how a system functions and whether such intra-urban service is truly a primary or incidental function of a system.

Although none of the commenters offered an effective alternative to the definitions we had proposed, they did give us several factors to consider and articulated a strong desire for greater clarity on the commuter/rapid transit distinctions. Toward that end, we have refined the definitions of those terms by noting which types of service are presumptively commuter or rapid transit and what criteria to apply in determining the proper characterization of a system that falls outside of the presumptions. Under the final policy, FRA's jurisdictional determinations will begin with two basic presumptions. First, if there is a statutory determination (such as NERSA) that Congress considers a particular service to be commuter rail, FRA will respect that determination and consider the service to be a commuter railroad. Second, a system to which the first presumption does not apply will be presumed to be an urban rapid transit system if it is a subway or elevated operation with its own track system on which no other railroad may operate, has no highway-rail crossings at grade, operates within an urban area, and moves passengers within the urban area as one of its major functions.

Where neither of the two presumptions applies, FRA will look at each system on a case-by-case basis and apply the following criteria:

Indicators of urban rapid transit:

- Serves an urban area and may also serve its suburbs.
- Moving passengers from station to station within the urban boundaries is a major function of the system and there are multiple station stops within the city for that purpose.
- The system provides frequent train service even outside the morning and evening peak periods.

Indicators of a commuter railroad:

- Serves an urban area, its suburbs, and more distant outlying communities in the greater metropolitan area.
- The system's primary function is moving passengers back and forth between their places of employment in the city and their homes within the greater metropolitan area, and moving passengers from station to station within the immediate urban area is, at most, an incidental function.
- The vast bulk of the system's trains are operated in the morning and evening peak periods with few trains at other hours.

As several commenters recommended, this more refined analysis looks at factors such as the system's geographical reach within a metropolitan area and the frequency of service. The presumptions also resolve many issues without the need for further analysis.

Process for Resolving Jurisdictional Questions

Several commenters suggested that, in addition to setting forth meaningful criteria for determining the scope of its jurisdiction over light rail in shared corridors, the policy statement should also describe what administrative options are available within FRA for resolving jurisdictional questions. The American Public Transportation Association (APTA) urged FRA to adopt a pre-waiver review process to discuss FRA's jurisdiction. Consistent with APTA, the NSWG suggested that FRA establish an informal process for transit systems to secure jurisdictional determinations without submitting to FRA jurisdiction. The NSWG stated that FRA could offer transit systems the option to use a bifurcated approach for the submission of waiver petitions. In part one, the transit system could offer facts and legal arguments sufficient to permit FRA to render a threshold jurisdictional determination, and in part two (assuming that FRA has jurisdiction) the transit system would submit its comprehensive waiver petition.

In response to these comments, FRA stresses that it is always willing to meet with transit agency officials at the earliest stages of a project to determine if the proposed operation would be subject to FRA jurisdiction, and welcomes the opportunity to periodically consult with these individuals throughout the entire planning and implementation of a project under our jurisdiction. FRA recognizes that the equipment choices and right-of-way alignment options are complex issues, the resolution of which may be aided if a transit agency receives early guidance from the agency concerning FRA jurisdiction. Accordingly, FRA has amended its policy to include an informal method for obtaining jurisdictional determinations from FRA early in the process before preparation of a waiver application. The mere submission of a request for FRA's views on whether it has jurisdiction over an entity would not constitute submission to FRA's jurisdiction or acquiescence in FRA's eventual determination. Of course, FRA would have to base such determinations on the facts presented to it, and any significant changes in the system after its determination could require revisiting that ruling.

Jurisdiction Over Particular Operations

Four commenters directed their comments to the issue of whether FRA has statutory jurisdiction over their particular rail operations.

MTA considers the proposal to be an unwarranted and improper exercise of FRA's jurisdiction as it relates to MTA's light rail system. MTA states that it will use every available safety measure to ensure the safety of its system, and will proceed with its dialogue with FRA, but continues to believe that FRA's attempt to exercise jurisdiction over its light rail system is inappropriate under existing law. MTA argues that it is not the mere connection to the general system through which FRA's jurisdictional

authority flows, but rather the nature of the operational connection between two systems. In this regard, MTA believes that the minimal intrusion caused by the operation of one freight train every other night on its central light rail line does not abrogate the statutory exclusion for rail rapid transit systems set forth in 49 U.S.C. 20101.

PATH indicates in its comments that it is concerned with only the issue of jurisdiction, and not with the policy statement's discussion of shared facilities, since the PATH system does not share track with any other operator. PATH stresses that since, in its view, it shares virtually no common characteristics with the Long Island Railroad, MARC, or VRE, it should not be included by FRA as an example of a ''commuter railroad.'' PATH concludes that, when applied to its operation, FRA's proposed definition of a transit system as an operation that devotes a substantial portion of its operations to moving people from point to point within an urban area would clearly result in the classification of PATH as a rapid transit system. At the same time, PATH argues that FRA has no reasonable basis for looking at the characteristics of the passengers who ride PATH rather than the characteristics of the equipment to determine if it has jurisdiction. PATH's comments do not mention that a federal appellate court ruled that FRA had not abused its discretion when, in 1996, it determined that PATH is a railroad within its jurisdiction. *Port Authority Trans-Hudson Corp.* v. *Federal Railroad Administration.,* No. 97–1103 (D.C. Cir., Dec. 15, 1997), *cert. denied,* 525 U.S. 818 (1998).

The Port Authority Transit Corporation (PATCO) in Philadelphia, Pennsylvania states that because it is an intra-urban mass transit system not connected to the general railroad system, it is subject only to FTA's authority. Since PATCO is regulated by FTA, and the respective jurisdictions of FTA and FRA are mutually exclusive, PATCO requests that the final joint policy statement make clear that it is not subject to FRA's regulations.

SEPTA devotes much of its comments to arguing that its planned passenger operation between Philadelphia and Reading, Pennsylvania, a distance of 62 miles, should not be subject to FRA's jurisdiction. One alternative being considered for that line is a light rail operation sharing a corridor with a freight line. SEPTA contends that, despite being primarily a commuter line, this operation would be outside of FRA's jurisdiction because it would serve other transit needs, have separate trackage in the freight corridor, and use light rail equipment.

While FRA is including a summary in this document of each operation's assertions for public informational purposes, this policy statement is not the appropriate vehicle for resolving the jurisdictional issues involving the peculiar facts of particular operations. Instead, FRA has addressed or will address each operation's concerns in the course of separate meetings and/or written correspondence.

Effect of FRA Jurisdiction on the Applicability of Other Railroad Laws

Two commenters, APTA and the NSWG, requested that FRA add language to the policy statement to clarify that if a rail operation is subject to FRA jurisdiction for rail safety purposes, it does not necessarily mean that the operation is also covered by other Federal railroad statutes such as the Federal Employers' Liability Act, the Railway Labor Act, and the Railroad Retirement Act. Likewise, the commenters argue that being within the scope of those other railroad laws should have no relevance to FRA in determining whether a railroad system is deemed a railroad for rail safety purposes. FRA agrees with the points made. These other Federal statutes have their own definitions, purposes, and legislative histories. FRA does not consult them in making jurisdictional determinations under the safety statutes. Moreover, FRA does not intend that its jurisdictional determinations have any bearing on whether a rail operation is a ''railroad'' for purposes of those other statutes. While there are some specific links in the safety statutes to some of those other laws (e.g., the rail safety statutes incorporate the dispute resolution process of the Railway Labor Act for handling certain disputes related to safety-based discrimination against employees, 49 U.S.C 20109(c), and the Federal Employers' Liability Act contains a provision precluding a finding of contributory negligence against any employee where the railroad's violation of any safety statute contributed to the employee's injury or death, 45 U.S.C. 53, we do not believe that those links indicate a Congressional intent that FRA's safety jurisdiction would be affected by the reach of those statutes.

Shared Use and Temporal Separation.

Simultaneous Joint Use Of Track by Light Rail and Conventional Equipment

In the discussion of ''Waiver Petitions Concerning Shared Use of the General System by Light Rail and Other Railroads,'' in which FRA explained the general factors that should be addressed in a Petition for Approval of Shared Use, FRA indicated that light rail operators intending to share trackage on the general railroad system with conventional rail equipment must either comply with FRA's safety rules or obtain a waiver of appropriate rules. 64 FR at 59050. FRA explained that a collision between an occupied light rail transit vehicle and conventional freight or passenger equipment would have catastrophic consequences because the light rail vehicles are not designed to withstand such a collision. 64 FR 59049. FRA stated that the surest way to ensure that such collisions do not occur is to strictly segregate light rail and conventional operations by time of day, and that the agency is likely to grant waivers of many of its rules where complete temporal separation between the incompatible equipment is demonstrated. 64 FR 59055. Some commenters welcomed FRA's preference for temporal separation, while others saw it as too restrictive and not sufficiently open to the possibility that light rail and conventional equipment can operate safely and simultaneously on the same track.

Among the comments received, APTA stressed that the final policy statement should reflect the principles of promoting more livable communities and taking advantage of underutilized freight corridors to provide service that would otherwise be too expensive, and noted that the expansion of rail passenger transportation would benefit America's communities in terms of reduced highway congestion, reduced pollution, short commuting times, and increased economic opportunities. APTA requested that the shared-use waiver process be flexible, expeditious, and recognize already existing state safety oversight procedures in order to permit local authorities the maximum flexibility in designing, building, and operating new light rail systems.

APTA believes that a broad approach examining relative risk is vital to developing an appropriate long-term policy promoting light rail. In addition to assessing the safety impact of diverting traffic to highways, FRA and FTA should explore European system safety techniques which permit operation of differing equipment designs on the same track based on crash avoidance philosophies (e.g., advanced train control systems). FRA should be open to new approaches for shared-use operations, e.g., fail safe separation, train orders and track warrants, positive train control, and operating practices and technological

improvements that may warrant waivers from certain rules after sufficient risk analysis.

Various members of the Committee for Better Transit, Inc. (CBTI) commented that FRA did not justify the need to restrict shared use of the same track by freight and light rail service, and concluded that added compliance costs will prevent the expansion of rail transit systems. The commenters urged adoption of more flexible European-style requirements involving positive train separation between light rail/rapid transit and conventional freight/passenger trains operating on the same trackage. CBTI also urged FRA and FTA to consider operational factors such as speed and traffic volume. With the exception of traffic on the Northeast Corridor, a full mixing of conventional railroad and light rail traffic should occur with the use of proper train control methods (e.g., positive train stop and speed control). CBTI also contended that FRA is proposing to adopt a double standard, since automobiles, taxicabs, and school buses currently share the road with heavy trucks that may be transporting hazardous materials.

The City of Santa Clarita, California requested that FRA permit shared use of rail lines by freight and passenger vehicles during the same time of day, noting that to do otherwise would hinder the potential development of electric and diesel light rail lines in urban and rural areas. The commenter also noted that although light rail vehicles in European countries simultaneously share trackage with heavy trains, no injuries or deaths have occurred.

The Joint Policy Advisory Committee on Transportation (JPACT) stated that the imposition of total temporal separation as a condition for granting a waiver is too restrictive and costly, and recommended considering factors such as positive train separation, safety standards, signal system quality, dispatch procedures and coordination, train speeds, and overall line usage. JPACT also recommended that FRA work with FTA and APTA to study transit systems in Europe that operate on the same trackage as freight without absolute temporal separation.

The State of Delaware Department of Transportation (Delaware) expressed concern in its comments about the policy statement's de facto effect of discouraging increased shared use of tracks for light rail transit systems and stressed the need to avoid hampering implementation of light rail projects. Although waivers are an option, Delaware contends that FRA provides no insight into what types of alternative measures would be acceptable in lieu of complete temporal separation of light rail service from freight traffic. In this regard, the commenter stated that advances in train car designs can increase the crashworthiness of light rail vehicles, and that positive train stop technology can help avoid collisions. Delaware also noted concern about the steep evidentiary burden facing a petitioner that seeks a waiver.

Mr. Gordon J. Thompson, an urban transportation planner and consultant, believes that issuance of the policy as proposed would be an insult to the American transit industry and to state transportation regulatory agencies. He contends that the proposal could stymie electric rail transit development at a time when the need to encourage the use of public transportation is a growing concern. The policy could make capital and operating costs higher than necessary to implement and operate new rail transit systems, at a time when transit improvement funds remain scarce.

In its comments, SEPTA stressed that a shared-use option with freight railroad carriers is fundamental to developing a cost effective and environmentally sound solution to mobility challenges. The commenter states that temporal separation should not be viewed as the only option, and FRA should allow separation that employs a combination of track switches, interlocking signals, advanced control technology, and other technical safeguards. In this regard, SEPTA notes that the proposed policy statement discusses physical safety standards for different vehicle types and safety considerations with respect to different operating strategies, yet cites no standards for measuring the safe execution of various operating strategies in delivering transportation services. The phrase ''the safety typical of conventional rail passenger operations'' lacks a definition of what it means or how it should be measured.

The North Central Texas Council of Governments expressed support and approval of the shared use policy for light rail transit operating on conventional railroad tracks. The commenter believes that the proposed policies concerning passenger and rail employee safety, coordinated operations of track infrastructure, and temporal separation are well reasoned and will allow for the development of new transit opportunities in abandoned or lesser used rail corridors.

The North (San Diego) County Transit District (NCTD) believes that temporal separation provides a level of safety for train crews and the public that can permit optimal use of the infrastructure, but acknowledges that this approach must be supported by a detailed operating plan with appropriate procedures to ensure that no concurrent track usage occurs. NCTD strongly endorses the concept of guidance for the shared use of the general railroad system by conventional and light rail operations, and agrees with FRA and FTA that the primary purpose of the guidance should be the coordination of safety programs.

New Jersey Transit (NJT) urged FRA to exercise its jurisdiction over those elements of shared trackage used by conventional rail operations (e.g., track, signals, grade crossing warning devices, dispatching), but not over light rail operating practices or light rail car design standards. In this regard, NJT believes that time separation, operating practices (including the unambiguous transition from one service to another), and safety technologies should provide FRA with adequate assurances of the safety of light rail operations on the general system. NJT requests that the final policy statement state that there would be no requirement to file a waiver petition when light rail cars operate on the general system provided that the transit agency can demonstrate that adequate safety measures are in place to eliminate the risks presented by shared use. Moreover, the commenter recommended that the final policy statement specifically provide that once a transit agency demonstrates that there will be temporal separation through a safe operating plan and appropriate technology, and indicates that the light rail operations will be subject to an FTA-approved State Safety Oversight Program, FRA would not exercise jurisdiction.

In support of its contention that FRA should not require the filing of waivers for light rail equipment used in a temporally-separated operation, NJT indicates that it would be burdensome and inappropriate to expect the transit agency to explain how it will provide for an equivalent level of safety. Completion of a detailed waiver application would be particularly burdensome to a small project, especially if the interaction between heavy and light rail is minimal or nonexistent.

Finally, NJT urges FRA to study whether shared use operations can be permitted without temporal separation. In this regard, the commenter states that the proposed policy statement is concerned with crashworthiness, but fails to give equal consideration to crash avoidance technology (e.g., derails, signaling systems, and dispatching).

FRA has carefully considered all of the comments. However, many of them are based on what FRA believes are two critical misunderstandings, i.e., the view that FRA's policy will somehow impose new compliance burdens, and the notion that FRA has ruled out simultaneous use of track by light rail and conventional equipment under all circumstances.

Several commenters seem not to understand that FRA's policy statement imposes no new burdens, but rather suggests how relief from existing regulatory burdens might be obtained by waiver. Wholly independent of this policy, FRA's rules apply to these systems today and would continue to apply whether or not FRA issued a statement of policy on shared use. If waivers are not obtained, those rules apply as they are written. For example, FRA's passenger safety standards (49 CFR part 238) alone would preclude all light rail operations on the general system, since light rail vehicles do not meet the structural and other standards found in that rule. (Of course, the rule has a grandfathering provision that, under certain conditions, makes one basic structural requirement inapplicable to certain equipment already in use in 1999.) Therefore, it is very much in the commenters' interest for FRA to provide guidance on how its waiver process will work in this context and how best to address the issues of concern to FRA. Although the waiver process will entail some cost to the light rail operation, that cost is occasioned by FRA's existing waiver rules (49 CFR part 211) rather than this statement, and the alternative is the full cost of compliance with existing substantive rules.

Various commenters who oppose the concept of temporal separation contend that FRA fails to recognize the sophisticated operational and technological safeguards that can eliminate the risks associated with shared use of the general railroad system, particularly for operations involving simultaneous joint use. These commenters generally maintain that FRA is preoccupied with crashworthiness of the vehicles and not sufficiently focused on crash avoidance.

In response, FRA points out that temporal separation is actually a crash avoidance measure, and the one most likely to prove fully successful. FRA's discussion of the disparate crashworthiness features of light rail and conventional equipment was intended to highlight the likely severity of a collision between those types of vehicles. Because safety risk is a function of the likely severity of an accident and the likelihood of its occurrence, the greater the predictable severity the more interested FRA is in reducing the likelihood of the occurrence. FRA has made clear that it has not ruled out the possibility that methods of collision avoidance such as sophisticated train control systems may provide an acceptable level of safety. 64 FR 59055. However, FRA has stated that a petitioner seeking to use these types of equipment on the same track at the same time will face a steep burden in demonstrating that the likelihood of such a catastrophic accident is remote.

FRA would expect the waiver applicant to demonstrate that the risk of such an event is extremely remote by discussing the types of extraordinary safety measures that would be taken to adequately reduce the likelihood of a catastrophic collision between the two types of equipment to an acceptable level. The waiver application would also need to include a quantitative risk assessment concerning the risk of a collision under the applicant's proposed operating scenario and an engineering analysis of the light rail equipment's resistance to damage in various collision scenarios. 64 FR 59051. FRA recognizes that a 100 percent risk reduction cannot be assigned to any individual risk countermeasure, and that there are risks associated with the adoption of any new technology.[4] However, because simultaneous joint use of trackage by structurally incompatible equipment inherently involves significant risk of severe consequences, FRA believes it is simply being reasonable to insist that the proponent of such an operation meet a steep burden of demonstrating a corresponding risk reduction through the use of highly competent methods of collision avoidance.

European Experience With Simultaneous Joint Use of the Same Trackage

As discussed above, many of the commenters urge FRA to study the success of mixed operations in parts of Europe, where passenger and freight vehicles of different strengths operate on the same track at the same time. The commenters stress that joint use of tracks by transit and standard railroad vehicles has proved to be an important innovation in Europe that should be permitted here.

In response, FRA observes that the agency is very familiar with the European systems. FRA has studied European high speed passenger systems in detail for many years, and more recently has directly observed the mixed use operations in places such as Karlsruhe, Germany. If some of those systems were replicated in the United States in every detail, FRA would very likely approve them by rule or waiver. However, FRA is not aware of any current or proposed light rail system in the United States that is fully comparable to the European systems the commenters offer as a model.

The successful European experience with mixed light rail and freight traffic is best exemplified by the system in Karlsruhe, Germany. FRA and FTA officials (including FRA safety experts) have personally observed that operation twice in the last several months, most recently as part of a joint visit in April 2000. In Karlsruhe, the light rail system shares some trackage with freight and intercity passenger trains, and the different operations are not segregated by time of day. However, unlike many candidate lines for new light rail starts in the United States, the predominant traffic in Karlsruhe is scheduled passenger trains, rather than a mix of local and through freight trains. More important, the Karlsruhe system involves certain features critical to its safety: all trains that operate in the shared use portions must be equipped with automatic train control; the light rail vehicles have very high braking capacities (as compared to light rail vehicles used in the United States); all trains use a common communications system that permits radio communication with the control center and all types of other trains; all trains operate under the same operating rules; train crews are part of an integrated work force that is trained to operate all types of vehicles in use on the line and in fact operates different vehicles during the average work week; all dispatching is done centrally for all trains; all train crews are limited to less than 40 hours of work per week; the different types of rail equipment that operate in the shared use area differ less in mass and structural strength than do conventional and light rail vehicles in the United States; and grade crossings, which are not as common as in the United States, are protected by four-quadrant gates.

The combination of all of these features has produced what appears to be a very safe, integrated system in Karlsruhe. The commenters who advocate that system as a model for shared, simultaneous use of track in this country imply that FRA is unwilling to permit such innovation here. That is not correct. Instead, FRA is unwilling to permit simultaneous use of track that

[4] These points are made in a report to FRA from its Railroad Safety Advisory Committee. *See* page 47 of ''Report of the Railroad Safety Advisory Committee to the Federal Railroad Administrator—Implementation of Positive Train Control Systems,'' dated September 8, 1999.

does not entail the full complement of Karlsruhe's most important safety features or comparable protections. Automatic train control, for example, entails a significant investment in infrastructure, both in the right-of-way and on board each train. While many light rail systems may have comparable train control technology, FRA has not seen a proposal to equip all trains (freight, passenger, and light rail) with this technology in the shared use area. Yet there is no reason to believe that the Karlsruhe system would exist without it. Nor is FRA aware of any proposal that involves an integrated workforce operating all the trains, with all crews working less than 40 hours per week. The idea of a freight railroad and a light rail operation using exactly the same operating rules has not commonly been a feature of proposed shared use operations in this country.

FRA admires the integrated rail system in Karlsruhe, which has begun to be replicated elsewhere in Europe. However, we ask that anyone who invokes that system as a model be fully cognizant of its traffic mix and basic safety features and what it would take to replicate them on America's freight lines. Corporate structures, labor agreements, and differing railroad and transit cultures make some of these features extremely hard to replicate in this country. We think that the future of simultaneous joint use in this country will likely depend on safety innovations specifically crafted for the rail network we have, such as positive train control systems that are being tested in various locations, and the development of light rail vehicles that are compliant with FRA's passenger equipment standards. However, we are open to consideration of any reasonable proposal.

Minor Connections to the General Railroad System

The AAR expressed concern about FRA's exercise of jurisdiction in cases where the only connection between the rail transit system and the conventional railroad is an at-grade crossing. The AAR believes that FRA should impose no restrictions on these operations, and that both should be permitted to operate during the same time of day. In addition, the commenter contends that complying with restrictions would be prohibitively expensive and compromise service to freight customers.

As FRA stated in its proposal on page 59058, when a rapid transit operation and a general system railroad have a railroad crossing at grade, ''FRA will exercise its jurisdiction sufficiently to assure safe operations over the at-grade crossing.'' Since the existence of a crossing represents a sufficient commingling of the rapid transit and general system operations to pose potentially significant safety hazards to one or both operations, FRA must reject the AAR's request that FRA decline to exercise its safety jurisdiction over this type of connection. In fact, because all of FRA's rules apply to all portions of the general system railroad, they apply to particular locations where the conventional railroad has a crossing with a light rail line. For example, the track and any signal devices at those locations must be maintained in accordance with FRA's rules. However, FRA notes that its rules apply only with respect to the general system portion of the rapid transit system's operation; if the non-general system portion of the rapid transit line is considered a ''rail fixed guideway system'' under 49 CFR part 659, FTA's rules apply to that portion.

AAR's comment points out the need for FRA to clarify when and how it will exercise jurisdiction over these railroad crossings at grade. In brief, FRA will work to ensure proper coordination of movements at these locations. FRA expects the general system railroad to comply with all applicable safety rules at that location, such as 49 CFR part 236 where the crossing is protected by a signal system. If FRA detects a safety problem at such a point that strict adherence to FRA rules on the part of the conventional railroad will not address, FRA will work with the conventional railroad and rapid transit line to develop a solution. As explained more fully in the statement of policy below, FRA does not expect to receive comprehensive Petitions for Approval of Shared Use concerning isolated conventional/light rail crossings that constitute the only connection a rapid transit system has to the general system. FRA does not consider those isolated connections to the general system as constituting shared use of general system trackage. However, given the fact that the crossing does constitute a connection to the general system that poses some risk to safety, FRA does expect to receive a brief waiver petition from the rail transit operator seeking relief from all of FRA's rules based on the safety protections in place at the crossing. On the other hand, where a light rail line crosses one or more conventional lines at grade and also shares trackage with one or more of those railroads, FRA will expect the Petition for Approval of Shared Use to explain how the light rail operation's systems safety plan addresses safety at the railroad crossings. In those situations, FRA will continue to look primarily to the conventional railroad for compliance with all applicable rules, but may use the waiver process to address any additional safety issues presented by the crossings.

Definitions

The Central Puget Sound Regional Transit Authority (Sound Transit) recommends that FRA clarify its definitions of the terms ''shared use'' and ''shared track.'' Sound Transit urges FRA to define ''shared track'' to mean cases where rail modes of differing vehicle strengths do, or intend to, operate on the same track, and would require strict temporal separation to receive FRA waivers. Sound Transit suggests that FRA define ''shared use'' to mean facilities that rail modes of differing vehicle strengths may use or share during the same operating hours, but whose nature precludes the simultaneous use or occupancy of those facilities; an example would be a crossing for freight and light rail. In cases of ''shared use,'' Sound Transit contends that temporal separation would not be needed, provided that there is compliance with existing FRA regulations.

In response to Sound Transit's comments, we don't believe that ''shared use'' and ''shared track'' are sufficiently distinguishable to provide added clarity. However, in an attempt to enhance clarity, FRA is revising the final policy statement to explain that ''shared use of track'' refers to situations where light rail transit operators conduct their operations over the lines of the general system, and includes light rail operations that are wholly separated in time (temporally separated) from conventional rail operations as well as light rail operations operating on the same trackage at the same time as conventional rail equipment (simultaneous joint use). As discussed above, in instances where a rail transit system crosses a conventional railroad at grade, FRA's safety rules will cover this point of connection to the general system, but FRA will not categorize this crossing, in itself, as a case of two operations sharing use of the general system. Accordingly, when these two rail operations cross at grade, the same set of rules apply regardless of whether the light rail operation and the conventional rail operation operate during the same times of day.

Coordination Between FTA and FRA Concerning Their Respective Regulatory Roles

Several commenters expressed concern that if FRA requires transit agencies to actively work in partnership with FRA and the state regulatory agency to address safety problems, a transit agency could be required to coordinate various aspects of its operation with up to three different Federal and state agencies. In this regard, San Diego Trolley stated that imposing such a requirement would lead to unnecessary duplication of effort and varying interpretations of rules, regulations and procedures. The California Transit Association (California Transit) commented that since FRA's jurisdiction is interpreted very broadly, it is unclear how the potential overlap of FRA, FTA, and state safety oversight jurisdiction will be coordinated to avoid confusion and duplicative efforts. California Transit also stressed that since the state safety oversight program is already in place in California, it would be premature to consider expanding FRA's role in transit operations.

FRA recognizes that light rail systems that meet the definition of rapid transit and are planning to operate on the general system, particularly those with segments off the general system, will be required to interact with FRA, FTA, and state agencies. Were FRA to somehow choose not to exercise its jurisdiction even over the shared use portion of these operations (which would eventually require amendments to all of its rules that apply to the general system), these operators would still have to deal with FTA and the states. FRA has no intention of doing that, of course. On the other hand, were FRA to exercise jurisdiction over the non-shared-use portions of these rapid transit lines under theory that they are connected to the general system, there would be no need to deal with FTA and the states. FRA has no intention of doing that, either, as it has made clear in its proposed statement and the proposed FRA/FTA joint statement.

Accordingly, the light rail operator's need to deal with three governments is both a byproduct of FRA's decision not to exercise jurisdiction as far as it may possibly reach (i.e., to the non-shared-use portions of rapid transit lines connected to the general system) and a major reason for the issuance of the joint FRA/FTA policy statement. That is, one of the purposes of that statement is to explain how FRA and FTA intend to coordinate their respective authorities, and the state safety oversight agency's authority is a derivative of FTA's program.

As set forth in detail in this final policy statement, light rail operators intending to share use of the general railroad system with conventional rail equipment will either have to comply with FRA's safety rules or obtain a waiver of appropriate rules. As FRA noted on page 59058 of its proposed policy statement, whenever FRA grants or denies a petition for a waiver of its safety rules, it will indicate whether its rules do not apply to any segments of the petitioning transit system's operation so that it is clear where FTA's rules on rail fixed guideway systems (49 CFR part 659) apply.

During the course of the waiver process, FRA will explain the transit system operator's compliance responsibilities for all segments of its operation and resolve ambiguities as to which agency's rules must be followed. With regard to FRA rules where no waiver is issued, there will be no potential for confusion: FRA will enforce and interpret its own rules. In the case of many of the regulations that FRA will likely waive, during its review of the waiver petition FRA will analyze information submitted by the petitioner to demonstrate that a particular safety matter is addressed in a state system safety plan and will be monitored by the state safety oversight program. Assuming FRA is satisfied that effective implementation of such a plan has occurred, FRA may conclude that adequate safety measures are in place to warrant waiver of certain FRA rules. The transit system operator would then be subject to the state safety oversight program in lieu of complying with these waived rules.

The prospect of FRA's continuing role even in those areas where it has granted a waiver seems to be the greatest concern of some commenters who fear duplicative regulation. However, all involved need to understand that FRA's issuance of a waiver does not constitute a relinquishment of its statutory jurisdiction. Whenever FRA grants a waiver to a railroad, FRA continues to regulate that railroad and merely applies the standard embodied in the waiver in place of the waived rule. A waiver may be withdrawn or modified if its conditions are violated. In the situations where FRA grants a waiver on the condition that the state safety oversight program will address the safety issue, FRA will defer to the state agency to the greatest degree possible, but will retain its jurisdiction. As to the regulations waived, this deference means that FRA's involvement will not entail regular inspection for adherence to the waiver conditions but will instead consist of periodic coordination with the state agency (perhaps including joint inspection) to ensure FRA is aware of any significant safety issues. FRA's involvement will vary with the degree of interface between the conventional and transit operations. Should any serious safety issues arise, especially issues likely to impact conventional operations, FRA would become more actively involved, working closely with the state oversight agency and FTA. The nature of this coordination with the state agency will vary somewhat depending on the working relationship FRA develops with each state agency. FTA will lend its good offices to promote that relationship. The greater FRA's confidence in the will and ability of the state agency to monitor the light rail operation with regard to the safety areas covered by waivers and keep FRA informed, the less FRA will need to become involved with those areas.

The FRA Waiver Process

FRA may grant a waiver of any rule or order only ''if the waiver is in the public interest and consistent with railroad safety.'' 49 U.S.C. 20103(d). The waiver petitions are reviewed by FRA's Railroad Safety Board (Safety Board) under the regulatory provisions of 49 CFR part 211.

Each waiver petition is considered on its own merits, and the applicant is not limited as to format or content, provided that the minimum procedural requirements of 49 CFR part 211 are satisfied. The waiver process provides the applicant with wide latitude in discussing each of the specific safety issues involved in the specific shared use operation, and the opportunity to help shape the conditions that FRA will deem necessary to assure the safety of the operation. Since FRA's procedural rules only give a general description of what any waiver petition should contain (*see* 49 CFR 211.9), and are not specifically tailored to situations involving light rail operations over the general system, the proposed policy statement provided detailed suggestions and guidance as to what general factors each petition should seek to address (these factors also appear in the final policy statement).

Use of the Term ''Waiver'' and Alternatives to Waivers

APTA commented that its member organizations are concerned about the negative perception that the term ''waiver'' creates at the local level, and requests that FRA instead describe the waiver process as ''authorized use'' subject to FRA review and approval.

APTA stresses that the term ''waiver'' implies the violation of a rule, and carries an unnecessarily pejorative connotation.

While FRA is sensitive to problems of perception, the agency urges all concerned to help correct any misperceptions about the nature of a waiver. As noted above, FRA may grant a waiver only if doing so ''is in the public interest and consistent with railroad safety.'' There is simply no reasonable basis on which to construe a waiver petition as a request from the petitioner for formal permission to flagrantly violate the requirements of a regulation, or to conclude that a transit system receiving a waiver will be less safe than a conventional railroad that operates in full compliance with FRA regulations. The publication of this policy statement and well constructed announcements by the petitioners of the granting of any waivers should help dispel any negative connotations that surround the use of the word ''waiver'' in some localities. FRA will continue to use the statutory term ''waiver'' to avoid any confusion as to the authority it is exercising. Of course, FRA has offered the suggestion that, where shared use of track is contemplated, the petition be called a ''Petition for Approval of Shared Use.'' FRA devised this term to make these sorts of waiver petitions readily identifiable and to address the concerns of those who dislike the term ''waiver.''

Moreover, APTA hopes that eventually FRA will classify certain categories of equipment and operating practices as ''accepted,'' rather than as ''waivers'' of its regulations, thereby eliminating the need for the filing of most individual waiver requests. APTA recommends that FRA then merely verify compliance with such accepted practices through review and inspection. In the alternative, APTA asks FRA to consider ''class waivers'' or a ''presumptive waiver,'' or perhaps permit self certification.

In a similar vein, NJT requests that, rather than issuing a waiver, FRA decline to exercise jurisdiction over a temporally separated operation if the transit agency implements a safe operating plan, involving the use of appropriate technology, and indicates that the operation is subject to an FTA-approved state safety oversight program. NJT also recommends that FRA exempt transit agencies from even being required to file waiver petitions if they can demonstrate that adequate safety measures are in place to eliminate the safety risks posed by shared use operations.

Given FRA's statutory authority, which includes providing the public notice of, and opportunity to comment on, the requested waiver before it is granted, FRA cannot agree to eliminate the formal review of waiver petitions by the Safety Board and, instead, simply grant presumptive waivers to entire classes of light rail equipment and operations without the benefit of full proceedings. FRA's analysis of a waiver petition provides it with a detailed understanding of the overall level of safety of a proposed operation, including consideration of the unique operating conditions concerning each operation (e.g., frequency and speeds of all operations on the shared use trackage, equipment specifications that relate to the crash survivability of the light rail equipment). FRA does not believe that an informal self-certification by the light rail operator, subject only to FRA review *after* the fact, would comport with FRA's responsibilities under the law.

Similarly, NJT's suggestion that FRA simply not assert jurisdiction over whole categories of general system operations does not fit with FRA's concept of its safety role with regard to the general system operations or the text of FRA's existing rules. Consistent with the statutory definition of ''railroad'' at 49 U.S.C. 20102, FRA will exercise jurisdiction over any rapid transit system that operates as a part of, or over the lines of, the general railroad system of transportation, but only to the extent that it is connected to the general system, not over the entire transit system. Even where complete temporal separation exists, there are still safety issues (e.g., grade crossing safety and accident reporting) concerning the light rail operation that FRA can address only by exercising its jurisdiction. Moreover, since all of FRA's rules apply to operations on the general system, any categorical exemption of types of operations would require amendments to those rules.

Of course, petitioners interested in alternatives to the waiver process should be aware of two possibilities. First, to the extent that extremely similar light rail systems are developed, the waiver petition for one can provide a very helpful model for the later system. As patterns like this emerge, the waiver process can become much less burdensome than it may be when each new system is the first of its kind. Second, FRA could eventually amend its various rules to permit light rail operations on the general railroad system under certain specified general conditions (e.g., temporal separation as ensured by meeting particular standards, or even particular forms of simultaneous joint use that satisfy the need to all but eliminate the risk of a catastrophic collision) and to conform certain of its rules to standards more appropriate to the rapid transit environment. Such regulatory revision can take very long, and FRA's experience with these systems to date has not revealed patterns of similarities among active or proposed systems that would warrant new rules of general applicability. However, the day will likely arrive when such rule revisions are in order. When completed, the new rules would obviate the need for waiver petitions on the part of any operation that could comply with their terms.

Submission, Review, and Processing of the Waiver Petition

Some commenters expressed concern with the length of time required by FRA to review and resolve each waiver petition, and indicated that financial decisions involving the planning of a light rail project often cannot be made until FRA determines the types of conditions that would be necessary to permit granting of a waiver. FRA believes that encouraging applicants to submit petitions that comprehensively address each of the general factors set forth in the policy statement will lessen the likelihood that FRA will require supplemental information during its review of the petition. If a petitioner submits a petition that specifies exactly which rules are requested to be waived and explains precisely how a level of safety at least equal to that afforded by the FRA rule will be provided by alternative measures, FRA will be able to expedite the waiver process. FRA is also willing to meet with transit agency officials at an early stage in a project, and may grant conditional approval of waivers subject to future review of the system safety plan to determine readiness to commence operations.

As an additional means of streamlining the waiver process, FRA's policy statement includes a rule-by-rule discussion of factors of great interest to FRA in considering waiver requests concerning each rule. FRA is also including a detailed chart in the final policy statement that will assist operators of rail transit operations on the general system that are completely separated in time from conventional railroad operations, and that pose no atypical safety hazards. The chart lists each of FRA's railroad safety rules and states the likelihood of such light rail systems receiving waivers from compliance.

As FRA noted in the proposed policy statement (as well as elsewhere in this

final policy statement), most light rail operations planning to operate on the general railroad system will also have segments off the general system which will be subject to FTA's rules for rail fixed guideway systems (49 CFR part 659). See 64 FR at 59051. To the extent that a waiver applicant can demonstrate that compliance with a state safety oversight program will satisfy FRA's safety concerns, this will likely expedite FRA's processing of the petition.

Whether All Affected Railroads Must Jointly File the Waiver Petition

Several commenters objected to FRA's suggestion that the light rail operator ''and all other affected railroads jointly file'' a petition for approval of shared use. 64 FR 59050. In particular, APTA argues that while the freight operator should be made aware of the waiver application, with agreements reached to ensure a safe operating environment, it is unnecessary to explicitly require the freight operator in all cases to approve the transit agency's application. Moreover, APTA is concerned that such a requirement may give the freight operator unfair leverage in negotiations with the transit agency over shared-use operations on the general system. The NSWG recommended adopting a procedure whereby the waiver applicant would have the burden to demonstrate that all users had a clear understanding of how operations will be conducted and how temporal separation would be strictly maintained.

Based upon careful consideration of the comments, FRA is revising the final policy statement to indicate that, while the conventional railroad(s) operating on a line will always be an interested party concerning a light rail operator's waiver petition for shared use of the general system, the conventional operator need not be a joint filer. FRA's rules on waiver petitions (49 CFR 211.7 and 211.9) do not require joint filing, and FRA's suggestion of joint filing was not intended to alter the rules. However, while FRA will not require joint filing as a prerequisite for evaluating the light rail operator's application, since FRA expects the transit applicant to thoroughly describe the alternative safety measures to be employed in lieu of each rule for which a waiver is sought, the input of the freight (or other conventional) operator is imperative. Accordingly, FRA anticipates that before a light rail operator submits a shared-use petition, the transit agency will effectively communicate with the affected freight or other railroad to coordinate interaction of the two operations on the same trackage, including what the respective hours of operation will be for each type of equipment. If the light rail and conventional operations will occur only under time-separated conditions, FRA will expect all of the affected railroads to jointly determine what means of protection will ensure that the different types of equipment will not operate simultaneously on the same track, and how protection will be provided to ensure that where one set of operations begins and the other ends there will be no overlap that could result in a collision. Unless a petition thoroughly explains how the light rail operation will interact with conventional operations on the line and documents the agreement of those other railroads to any necessary safety arrangements to coordinate their operations with the light rail operation, FRA is likely to conclude that the petition does not contain ''sufficient information to support the action sought.'' 49 CFR 211.9. As a condition of any waiver, the conventional railroad must subscribe to these responsibilities that are relevant to its operations in connection with the shared use arrangement. Accordingly, FRA's policy statement suggests that the petition contain documentation of the precise terms of the agreement between the light rail operator and the conventional railroad concerning any actions that the conventional railroad must take to ensure effective implementation of alternative safety measures. Of course, FRA will not grant a waiver to a light rail operator that is based on conditions concerning another railroad's operations without providing notice and an opportunity for a hearing, which will permit that other railroad to fully explain its views.

However, where the ''other affected railroads'' are legally responsible for compliance with the regulation sought to be waived by the light rail operator, these other railroads must also petition for relief, whether jointly with the light rail operator or separately. For example, if a light rail operator is seeking a waiver of the Signal System Reporting Requirements of 49 CFR part 233 but the conventional railroad is currently responsible for maintaining some of the signal systems, both parties have compliance obligations concerning the light rail operation. In some areas, the freight operator will essentially be relieved of certain of its obligations if the light rail operator receives a waiver. For example, FRA's rule on passenger equipment generally makes a railroad liable for permitting the use or haul on its line of non-complying equipment. 49 CFR 238.9. If the light rail operator obtains a waiver for its equipment, that equipment will no longer be considered not in compliance. However, the freight operator may want to participate in the waiver process from the beginning.

Duration of the Waiver

The NSWG urged FRA to grant waivers for shared-use operations in perpetuity, subject to FRA's authority to modify or withdraw a waiver if the conditions imposed are not met or if unanticipated safety issues arise that merit such action. In this regard, the NSWG stated that transit systems likely to seek temporal separation waivers will seek them in connection with rail projects funded in part with Federal funds administered by FTA. Since FTA will require these transit systems to demonstrate that they will have control of, and the ability to use, all of the assets (e.g., the rail right-of-way and passenger vehicles) acquired with the Federal funds for the 20 to 40 year useful life of the assets, a five year limitation on the duration of a waiver is, in NSWG's view, inadequate.

FRA is mindful of the transit agency's need for a degree of long-term certainty about the safety-related conditions that may apply to its operation, and recognizes that a rail project represents a long term commitment of a transit agency's resources. However, FRA cannot accept NSWG's recommendation that the Safety Board issue waivers for indefinite periods of time, since this would hinder FRA's opportunity to determine if circumstances have changed or if issues have arisen that were not contemplated when the relief was last granted or renewed. FRA notes that the agency typically issues waivers of limited duration and has not adopted a unique policy here. FRA intends to grant waivers for periods of sufficient length (e.g., five years) to permit long-term planning. Moreover, FTA is well aware of the reasons for FRA's reluctance to grant permanent waivers, and will not consider the need to renew a safety waiver an indication that the transit system lacks control of, and the ability to use, its assets for their useful life.

While FRA retains the authority to modify or withdraw a waiver in the interest of rail safety, such action is generally limited to instances when FRA uncovers a substantial change in the conditions under which the waiver was granted or determines that a significant unforeseen safety issue exists. FRA will ordinarily become aware of such developments during the term of the waiver through its coordination with the state safety agency that oversees the subjects on which FRA has granted waivers, and

will work with the waiver recipient to sufficiently address our safety concerns. However, the renewal process will provide a periodic opportunity to determine if such important changes in circumstances have occurred. FRA does not view a waiver as a temporary measure that will jeopardize a rail project's continued operation once the waiver expires. Rather, FRA expects to routinely renew waivers where the conditions underlying the waiver have not changed substantially and no major unforeseen safety issues have arisen, and where FTA and the state safety oversight agency affirm that the operation is in compliance with FTA requirements.

The Role of FTA in the Waiver Process

Four of the five commenters on this issue objected to the fact that FRA will not permit FTA's liaison to FRA's Safety Board to vote. The consensus of the commenters was that the proposed approach will not effectively ensure that FTA's knowledge and insights with respect to transit operations, financial issues, and state safety oversight are adequately considered by the Safety Board. The commenters believe that the two DOT agencies have different perspectives on non-safety related topics, and the best decisionmaking between two parties with diverse interests occurs with shared equal authority. However, the fifth commenter, San Diego Trolley, stated that while it would be inappropriate to allow FTA to participate in voting on waiver applications, FTA's representative should have more direct authority in the decisionmaking process.

Under delegation from the Secretary of Transportation, see 49 CFR 1.49, FRA administers the Federal railroad safety statutes, and all waivers requested from FRA's Safety Board involve exclusively FRA's regulations. FTA is not charged with administering the Federal railroad safety laws. Rather, FTA is responsible for: developing comprehensive and coordinated mass transportation systems to serve metropolitan and other urban areas; administering urban mass transportation programs, including its rule on the safety of rail fixed guideway systems; and assuring appropriate liaison and coordination with other governmental organizations with respect to the foregoing. Since FTA's statutory authority does not include administration of the Federal railroad safety laws, it would be inappropriate and outside the scope of FTA's legal authority if the FTA liaison to the Safety Board can veto the waiver conditions that FRA elects to impose on an applicant. Similarly, while FRA provides its rail safety expertise to FTA on safety issues inherent in FTA's review of rail grant proposals, FRA cannot vote on FTA's funding decisions, and it would not be appropriate for FRA to do so. FRA may have contributed to some confusion on this issue by using the description ''non-voting'' without explaining how the Safety Board works. FRA's Safety Board is not a collegial body like an independent agency; the chairperson of the board is the sole deciding official and acts by delegation from the Administrator. Other board members, all of whom are FRA staff, participate in the deliberations and offer advice and counsel, but do not vote. Under FRA's arrangement with FTA, the FTA representative will have a voice in deliberations equal to that of FRA staff.

In response to concerns from the commenters that without an official vote FTA's role with the Safety Board be ineffective, FRA stresses that the reason it is including an FTA official as an invited participant in the consideration of Petitions for Approval of Shared Use is to receive FTA's, and through it, the transit industry's perspective on the many unique and complex issues involving light rail operations. Since FRA recognizes that its expertise is in matters related to railroad safety, the agency wants FTA's expert advice on the facts presented in the petition concerning the project's special characteristics and operating considerations prior to selecting appropriate waiver conditions. Under FRA's safety partnership with FTA, not only will FTA have the opportunity to shape the safety requirements that will apply to light rail operations on the general system, but FTA will gain a fuller appreciation of the rail safety issues involved in each shared-use operation considered by the Safety Board.

Examples of Two Petitions for Approval of Shared Use Already Granted by FRA

Before FRA's proposed policy statement was published in the **Federal Register** last November, the agency received two petitions for approval of shared use, both seeking waivers of compliance with certain requirements of the Federal railroad safety regulations and exemption of certain statutory provisions in connection with planned light rail systems. Transit agencies planning to request similar waivers and/or exemptions are encouraged to review the electronic dockets for these petitions as helpful examples in preparing their own submissions. The first petition was submitted by NJT on July 13, 1999, and was docketed as FRA Waiver Petition No. FRA–1999–6135. *See* 64 FR 45996 (August 23, 1999). The second petition was submitted by the Utah Transit Authority (UTA) on August 19, 1999, and was docketed as FRA Waiver Petition No. FRA–1999–6253. *See* 64 FR 53435 (October 1, 1999). Each docket includes a copy of the petition itself, the letter granting the petition, and a discussion of the waiver conditions. While these petitions may serve as useful examples for future waiver applicants to follow, FRA also expects transit agencies to review the guidance included in this final policy statement in conjunction with the regulatory requirements contained in 49 CFR part 211. FRA granted each waiver for a period of five years, and conditioned each waiver on the operator's submission for FRA approval of procedures for ensuring temporal separation. The NJT waiver was an example of FRA's willingness to grant a waiver early in the planning process, subject to conditions such as subsequent submission of evidence concerning state approval of the system safety plan.

Operations Within Shared Rights-of-Way

FRA received 11 comments on the issue of FRA's jurisdiction over a light rail transit operation sharing a right-of-way but no trackage with a conventional railroad. In general, the commenters request clarification in the final policy statements as to how FRA and FTA intend to coordinate their programs with respect to a rail transit system that operates within the same right-of-way as conventional equipment, without shared trackage. Many of the commenters stress that any standards adopted by FRA for sharing the right-of-way need to be as clear and explicit as possible to assist the transit systems in evaluating potential light rail projects and planning those deemed desirable.

SEPTA believes that it is unnecessary for FRA to assert jurisdiction over light rail operations running parallel to freight service because transit agency systems are covered under existing state safety oversight program plans. SEPTA states that the proposed joint policy statement is unclear as to the limits of FRA's jurisdiction, other than to indicate that FRA's safety rules cover points of connection where a light rail operation crosses the tracks of a freight railroad at grade. In this regard, SEPTA seeks guidance as to what safety issues FRA believes will exist where light rail operations are conducted on separate tracks within a shared right-of-way. The commenter also notes that the policy statement doesn't address the issue of

physical barrier or distance separation between shared use trackage.

Similarly, APTA stated that instead of covering shared corridors, the final policy statements should be limited to scenarios where transit vehicles operate on or over the actual tracks of the general system. However, APTA agrees that the final policy statements should cover areas where there is no shared use of general system track if the operations include public highway/rail grade crossings or rail crossings at grade (diamond interlockings).

The AAR requests that FRA include a definition of the term ''shared right-of-way'' in the final policy statement, and also recommends that FRA address shared right-of-way operations on a case-by-case basis. In addition, the commenter states that intrusion detectors are often appropriate in shared rights of way, and notes that relevant factors to be considered include configuration of the right-of-way, elevation changes, and track separation distances.

The NSWG urges FRA to issue further guidance as to the likelihood of waiver being granted in a shared right-of-way situation where FRA has jurisdiction, including a chart setting forth which regulations could presumptively be waived. Also, the NSWG recommends that FRA and FTA develop guidelines with respect to track center lines. For example, the joint policy statement could state that transit trackage located 20 feet or more from the closest general system trackage, measured from center lines, normally would not require intrusion detection or extraordinary safety measures designed to avoid collisions.

San Diego Trolley contends that the proposal is unclear as to what intrusion detection steps will be required. The commenter notes that while there is the potential for derailments and other accidents to occur within a common corridor, this condition exists at many other locations where commuter rail, intercity passenger services, or freight services operate within a common corridor.

The California Transit Association commented that the proposal is unclear as to the issue of FRA jurisdiction over shared rights-of-way. The commenter stated that the potential hazard of intrusion in a shared corridor situation is better addressed by existing state safety oversight regulation and appropriate safety analysis covered in transit agency system safety program plans.

FRA appreciates the need for greater clarity with regard to shared rights-of-way. Several basic principles deserve emphasis. FRA exercises jurisdiction over all commuter operations, even if they use equipment considered light rail. All of FRA's regulations apply to such operations, absent a waiver. Therefore, how FRA exercises its jurisdiction in a corridor shared by light rail and conventional equipment is an issue only if the light rail operation meets the definition of urban rapid transit. The operation of rapid transit on track parallel to the tracks of a conventional railroad (i.e., parallel to track traversed by freight, intercity passenger, or commuter service) will not, in and of itself, trigger FRA jurisdiction. Where a rapid transit line merely shares a right-of-way with a conventional line but the two share no track, FRA does not consider that situation to involve shared use of the general system by the rapid transit line, and would not expect to receive a Petition for Approval of Shared Use. Nevertheless, even when a rapid transit operation and a conventional railroad share only a right-of-way, without sharing trackage, certain limited connections to the general system may still exist, and FRA will then have a regulatory role by ensuring safety at these points of connection. Three types of connections are of greatest concern: highway/rail grade crossings, railroad crossings at grade, and shared systems of train control at specific points.

For example, if the same tower operator authorizes and controls the movement of the trains of both a transit line and a freight railroad operating over a movable bridge, FRA will exercise jurisdiction at this point of connection, but only to the extent necessary to ensure safety. We have discussed our exercise of jurisdiction over rail crossings at grade above, under the heading of ''Minor connections to the general railroad system'' in the discussion of comments on ''Shared Use and Temporal Separation.'' Further, in the case of a rapid transit system and a conventional railroad sharing a highway-rail grade crossing, FRA will expect both systems to observe its rules on grade crossing signals that, for example, require prompt reports of warning system malfunctions, and, with the exception for brightness of the lights discussed below, will expect both operations to observe its rules concerning locomotive conspicuity (ditch lights). If a rapid transit system desires a waiver of the very few FRA rules that will apply at these points of connection, it should file a waiver request tailored to the specific rule(s) in question rather than the much more comprehensive Petition for Approval of Shared Use that FRA has recommended for situations involving shared trackage.

FRA sees no need to define ''shared rights-of-way.'' If the types of connections FRA has identified as triggering a limited exercise of its jurisdiction exist with regard to adjacent rapid transit and conventional lines, there is obviously a shared right-of-way. Where such operations take place on parallel tracks but lack any such connections, there may still be a shared right-of-way, but it has no regulatory significance.

Although FRA will limit its direct exercise of jurisdiction over transit systems operating in shared rights-of-way in the manner described above, FRA will, under the provisions of the partnership agreement entered into with FTA in October 1998, use its rail safety expertise in an advisory capacity to identify and make recommendations for the resolution of safety issues inherent in grant proposals seeking Federal funds from FTA. This working relationship will ensure that FTA has a fuller understanding of the safety risks involved in each shared right-of-way operation, and relevant information to shape the contents of the system safety plan that will be monitored by the state safety oversight program. With respect to the specific comments received concerning the use of intrusion detectors and recommendations to FRA about appropriate distances to require between transit trackage and the closest general system trackage, it would be beyond the scope of this policy statement to adopt regulations concerning track centers (the distance between the center lines of adjacent tracks) or intrusion detection. FRA has no rules on these subjects now. Should FRA deem it necessary to regulate intrusion detectors and/or track separation distances between transit and conventional equipment within a common right-of-way, FRA will initiate a notice-and-comment rulemaking aimed at setting standards. In the meantime, FRA and FTA will coordinate with rapid transit agencies and conventional railroads wherever there are concerns about sufficient intrusion detection and related safety measures designed to avoid a collision between rapid transit and conventional equipment.

Miscellaneous Comments

Employee Qualifications

The BLE, the only commenter to address this issue, limited its comments to waivers of 49 CFR part 240, because of an overriding concern for the manner in which light rail vehicle operators are

to be trained and certified. The BLE contends that the proposed joint policy statement leaves a gaping regulatory hole by contemplating a mixture of Federal and state oversight of those who will operate the light rail vehicles. The commenter notes that the standardization fostered by part 240 has enhanced safety in the railroad industry, and believes that the proposal retreats from the progress of the last decade with respect to operators of light rail equipment. In this regard, the BLE argues that a blanket waiver for light rail vehicle operators from industry qualification and certification requirements would fly in the face of the standard articulated by FRA and FTA. The operating environment in which light rail vehicle operators find themselves, rather than the type of equipment they operate, must dictate the appropriate degree of FRA oversight. Safety and consistency demand continued Federal preemption in the area of training, qualification, and certification of all transportation employees who operate on the general system.

FRA recognizes the safety implications of permitting light rail vehicle operators to operate on the general system without receiving proper training and qualification. Waivers of the engineer certification requirements would be most likely in the case of temporally-separated operations on the general system that are part of a unified transit system with segments outside the shared use area. There, the basic reason for a waiver would be to ensure that the light rail operators are trained with the entire light rail system in mind, including its non-shared-use portions. In those situations, however, FRA is particularly concerned about what means of protection the waiver applicant would use to ensure that operator error does not result in different types of equipment being operated on the same track, and how the light rail system would ensure that when one set of operations begins, and the other one ends, there can be no overlap that would cause a collision. In response to the comment, FRA stresses that before a transit system could receive a waiver, it must satisfy FRA that the system safety plan developed under FTA's rules will provide for operators of light rail equipment to receive the necessary training and skills to safely operate on the general system. The transit system would have the burden to show that the light rail operators would receive a level of training, testing, and monitoring on the rules governing train operations appropriate for light rail operations on the general system. Any light rail system unable to meet this burden would have to fully comply with the requirements of part 240. Moreover, where a transit system intends to operate simultaneously on the same track with conventional equipment, FRA will not be inclined to waive the part 240 requirements. In that situation, FRA's paramount concern would be uniformity of training and qualifications of all those operating trains on the general system, regardless of the type of equipment.

Ditch Lights

The Delaware Valley Association of Rail Passengers supports most of the proposals in the policy statement, particularly the waiver concept. However, the commenter believes that waivers should not be granted under 49 CFR part 229, pertaining to ditch lights (also known as auxiliary lights; see 49 CFR 229.125, 133). Joint railroad-transit operations are often found in urban areas with many grade crossings, and these lights have been proven to reduce collisions between trains and highway traffic. Moreover, installation of such lights on light rail vehicles is not burdensome.

FRA shares the commenter's safety concerns. As noted in the chart contained in each proposed policy statement (explaining the likely treatment of waivers sought under part 229), and in FRA's discussion of likely waivers under part 229, FRA is unlikely to completely waive the requirement for auxiliary lights due to their importance for grade crossing safety. See 64 FR at 28241, 59053, and 59056. In this regard, FRA believes that the risk of accidents at grade crossings decreases if the equipment used by both conventional and light rail trains present the same distinctive profile to motor vehicle operators approaching grade crossings (i.e., a triangular arrangement of lights). Safety could be compromised if FRA permitted light rail systems to operate through the same grade crossings as conventional equipment with light arrangements that do not provide highway users with the same warning that a rail vehicle is approaching. However, as discussed in the section below concerning factors to address when seeking a waiver of part 229, waiver of the intensity requirement, so as to permit lights of a lesser candela, seems appropriate.

Whistle Bans

The City of Boca Raton, Florida commented that FRA should develop rules to allow and promote the installation of four-quadrant gate systems at all railroad grade crossings, and provide for funding mechanisms. The commenter states that if the gates have been installed, FRA's rules should allow whistle bans, at least at night, at these four-quadrant gate system locations.

FRA recently initiated a rulemaking concerning the use of locomotive horns at highway-rail grade crossings. On January 13, 2000, FRA published in the **Federal Register** a notice of proposed rulemaking to add a new part 222, entitled ''Use of Locomotive Horns at Public Highway-Rail Grade Crossings,'' to require that a locomotive horn be sounded while a train is approaching and entering a public highway-rail crossing. 65 FR 2230. The proposed rules provide for an exception to the general requirement in circumstances in which there is not a significant risk of loss of life or serious personal injury, use of the locomotive horn is impractical, or supplementary safety measures fully compensate for the absence of the warning provided by the horn. Among the proposed options available to state and local governments seeking to provide a substitute for the locomotive horn in the prevention of collisions and casualties at public highway-rail grade crossings, is the four-quadrant gate system. See proposed 49 CFR 222.41, 222.43, and Appendix A. Under this system, gates are installed at a crossing which are sufficient to fully block highway traffic from entering the crossing when the gates are lowered, including at least one gate for each direction of traffic on each approach. This policy statement has no relationship to that rulemaking.

Definition of ''Heavy Rail''

One commenter contends that FRA improperly defines the terms ''heavy rail'' and ''light rail'' in the proposed policy statement. The commenter states that the term ''heavy'' has nothing to do with crashworthiness or car weight, but rather applies to the construction of the right-of-way, and suggests that it would be clearer to use the terms ''rail rapid transit'' for what is incorrectly called heavy rail, and ''urban electric transit'' for light rail.

Contrary to the commenter's statements, FRA's proposal properly distinguished between the terms ''heavy rail'' and ''light rail.'' After observing that some current and planned passenger operations in metropolitan areas are often referred to as ''light rail,'' FRA indicated that the term usually refers to lightweight passenger cars operating on rails in a right-of-way that is not separated from other traffic, such

as street railways and trolleys. 64 FR at 59049. FRA also stated that ''heavy rail'' generally refers to trains operating on rails that are in separate rights-of-way from which all other vehicular traffic is excluded, and observed that in transit terms, heavy rail is also known as ''rapid rail,'' ''subway,'' or ''elevated railway.'' FRA noted that conventional rail equipment such as that used by freight railroads, Amtrak, and many commuter railroads is different from, and considerably heavier and structurally stronger than either light or heavy rail equipment, as those terms are used in the transit industry. FRA advised that although this equipment is sometimes referred to as ''heavy'' rail, it would use the term ''conventional'' to avoid confusion between the different ways ''heavy'' is used in the transit and general railroad communities.

II. Changes From the Proposed Statement of Policy Concerning the Extent and Exercise of FRA'S Safety Jurisdiction Over Passenger Operations

To ensure that the regulated community is fully aware of how FRA views the extent of its jurisdiction over passenger operations and how it intends to exercise that jurisdiction, FRA is amending the discussion of its jurisdiction in its Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, which is found in at appendix A of 49 CFR part 209. In its proposed policy, FRA included an extensive discussion of its legal authority over railroad safety, including the extensive legislative history of the term ''railroad'' as used in the Federal railroad safety statutes. 64 FR 59047–59049. FRA does not repeat that discussion here, but incorporates it by reference as the basis for its policy on the extent and exercise of its jurisdiction over passenger operations.

Based on comments received, FRA is making some changes to its proposed policy. The definition of ''commuter railroad'' is being amended to make clear that certain specific operations named as commuter authorities by statute are considered commuter railroads under the safety laws regardless of how the criteria that distinguish other railroads as ''commuter'' in nature may apply to them. FRA believes this change is necessary in order to ensure that railroads that Congress considers commuter railroads are within FRA's exercise of its jurisdiction without the need for extensive debate about the nature of their operations.

For reasons explained in the discussion of comments, we are also revising the definitions of ''commuter railroad'' and ''urban rapid transit'' to remove as a consideration whether ''a substantial portion'' of a system's operations is devoted to moving people from station to station within a city, and to focus instead on whether such service is a ''primary function'' of the system or ''an incidental function'' of its service.

We are further revising the jurisdictional statement to facilitate determinations about whether a system is a commuter railroad or urban rapid transit system. We have included two presumptions, one that adopts statutory determinations of a system's characterization, and the other that presumes a system is rapid transit if it meets a certain description. Where neither presumption applies, we have provided a list of criteria that need to be considered in making the commuter/rapid transit determination.

FRA is also revising its statement of policy to make clear that highway-rail grade crossings used by both a conventional railroad and a light rail operation provide a sufficient connection to warrant a limited exercise of FRA's jurisdiction over the light rail operator. In the proposal, that point was made, but under a heading concerning connections not sufficient to trigger the exercise of jurisdiction. The final policy statement places the discussion more appropriately and slightly expands it.

III. Changes to Proposed Policy Concerning Petitions for Approval of Shared Use of the General System by Light Rail and Other Railroads

Much of FRA's proposed statement of policy concerned how the agency intended to address waiver requests concerning shared use of the general system by light rail and conventional operations. FRA provided guidance on how interested parties could file such waiver requests, what they should address, and what waivers are likely under particular circumstances. FRA has amended its policy to reflect various comments received on the proposal. Moreover, FRA has concluded that this policy, like its policy on the extent and exercise of its safety jurisdiction, should reside in the CFR for easy future reference. Therefore, we are adding a new appendix to 49 CFR part 211, which contains FRA's rules of practice, including those concerning waivers.

Several commenters requested that FRA provide a means by which those developing light rail systems could obtain a jurisdictional determination from FRA without first preparing an entire waiver petition. This makes good sense, because an early jurisdictional determination could affect planning for a system in significant ways. Of course, anyone is always free to request such determinations from FRA. The revised policy statement merely reiterates this point, recommends where such requests should be submitted, and suggests that requesting such determinations may be a useful step to take well before filing a waiver petition.

Another subject of great interest to commenters was whether the light rail operator must always get the general system railroad to join in any petition for waiver or approval of shared use. Our proposed statement included a request that the light rail operator and ''all other affected railroads'' file the petition jointly. In the discussion of comments, above, we explained why this would be very useful but is not required, and pointed out that other affected railroads may need to file their own petitions if the planned operations somehow preclude their compliance with FRA's rules. Even if they do not need to file a petition, of course, all affected railroads will have an opportunity to comment and appear at any hearing that is requested on the light rail operator's petition. Our final policy statement explains these points.

Many commenters indicated the need for greater clarity in FRA's policy concerning situations where the light rail operator and conventional railroad do not share trackage but have operations that are otherwise sufficiently connected to warrant a limited exercise of FRA's jurisdiction. FRA has included a more thorough discussion of this subject to the final policy statement. The statement makes clear that, where minimal connections exist in a common right-of-way (even where the two operations use their respective tracks simultaneously), the light rail operator will be subject to only those safety rules pertinent to the connection that exists, and that any waiver request should be limited to just those rules.

The new Appendix A to part 211, therefore, will include a discussion of which railroads need to file waiver petitions in shared use or shared right-of-way situations, the general factors that should be addressed in a Petition for Approval of Shared Use, general considerations concerning petitions for waiver where the right-of-way is shared but the connections are limited, factors to address in any petition concerning specific rules, and the areas where waivers are likely in shared use situations (including a chart).

List of Subjects

49 CFR Part 209

Railroad safety, Enforcement Procedures.

49 CFR Part 211

Railroad safety, Rules of Practice.

The Policy Statement

In consideration of the foregoing, chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20114, and 49 CFR 1.49.

Appendix A to 49 CFR part 209 is amended as follows.

Appendix A—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

2. The title of Appendix A is revised to read, as set forth above.

3. Under the heading ''The Extent and Exercise of FRA's Safety Jurisdiction,'' the seventh paragraph (which begins, ''For example, all of FRA's regulations'') of the appendix is removed, and the following paragraphs are added in its place:

The Extent and Exercise of FRA's Safety Jurisdiction

* * * * *

For example, all of FRA's regulations exclude from their reach railroads whose entire operations are confined to an industrial installation (i.e., ''plant railroads''), such as those in steel mills that do not go beyond the plant's boundaries. E.g., 49 CFR 225.3(a)(1) (accident reporting regulations). Some rules exclude passenger operations that are not part of the general railroad system (such as some tourist railroads) only if they meet the definition of ''insular.'' E.g., 49 CFR 225.3(a)(3) (accident reporting) and 234.3(c) (grade crossing signal safety). Other regulations exclude not only plant railroads but all other railroads that are not operated as a part of, or over the lines of, the general railroad system of transportation. E.g., 49 CFR 214.3 (railroad workplace safety).

By ''general railroad system of transportation,'' FRA refers to the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas. Much of this network is interconnected, so that a rail vehicle can travel across the nation without leaving the system. However, mere physical connection to the system does not bring trackage within it. For example, trackage within an industrial installation that is connected to the network only by a switch for the receipt of shipments over the system is not a part of the system.

Moreover, portions of the network may lack a physical connection but still be part of the system by virtue of the nature of operations that take place there. For example, the Alaska Railroad is not physically connected to the rest of the general system but is part of it. The Alaska Railroad exchanges freight cars with other railroads by car float and exchanges passengers with interstate carriers as part of the general flow of interstate commerce. Similarly, an intercity high speed rail system with its own right of way would be part of the general system although not physically connected to it. The presence on a rail line of any of these types of railroad operations is a sure indication that such trackage is part of the general system: the movement of freight cars in trains outside the confines of an industrial installation, the movement of intercity passenger trains, or the movement of commuter trains within a metropolitan or suburban area. Urban rapid transit operations are ordinarily not part of the general system, but may have sufficient connections to that system to warrant exercise of FRA's jurisdiction (*see* discussion of passenger operations, below). Tourist railroad operations are not inherently part of the general system and, unless operated over the lines of that system, are subject to few of FRA's regulations.

The boundaries of the general system are not static. For example, a portion of the system may be purchased for the exclusive use of a single private entity and all connections, save perhaps a switch for receiving shipments, severed. Depending on the nature of the operations, this could remove that portion from the general system. The system may also grow, as with the establishment of intercity service on a brand new line. However, the same trackage cannot be both inside and outside of the general system depending upon the time of day. If trackage is part of the general system, restricting a certain type of traffic over that trackage to a particular portion of the day does not change the nature of the line—it remains the general system.

4. Appendix A to 49 CFR part 209 is further amended by adding the following paragraphs immediately before the section called ''Extraordinary Remedies:''

FRA's Policy on Jurisdiction Over Passenger Operations

Under the Federal railroad safety laws, FRA has jurisdiction over all railroads except ''rapid transit operations in an urban area that are not connected to the general railroad system of transportation.'' 49 U.S.C. 20102. Within the limits imposed by this authority, FRA exercises jurisdiction over all railroad passenger operations, regardless of the equipment they use, unless FRA has specifically stated below an exception to its exercise of jurisdiction for a particular type of operation. This policy is stated in general terms and does not change the reach of any particular regulation under its applicability section. That is, while FRA may generally assert jurisdiction over a type of operation here, a particular regulation may exclude that kind of operation from its reach. Therefore, this statement should be read in conjunction with the applicability sections of all of FRA's regulations.

Intercity Passenger Operations

FRA exercises jurisdiction over all intercity passenger operations. Because of the nature of the service they provide, standard gage intercity operations are all considered part of the general railroad system, even if not physically connected to other portions of the system. Other intercity passenger operations that are not standard gage (such as a magnetic levitation system) are within FRA's jurisdiction even though not part of the general system.

Commuter Operations

FRA exercises jurisdiction over all commuter operations. Congress apparently intended that FRA do so when it enacted the Federal Railroad Safety Act of 1970, and made that intention very clear in the 1982 and 1988 amendments to that act. FRA has attempted to follow that mandate consistently. A commuter system's connection to other railroads is not relevant under the rail safety statutes. In fact, FRA considers commuter railroads to be part of the general railroad system regardless of such connections.

FRA will presume that an operation is a commuter railroad if there is a statutory determination that Congress considers a particular service to be commuter rail. For example, in the Northeast Rail Service Act of 1981, 45 U.S.C. 1104(3), Congress listed specific commuter authorities. If that presumption does not apply, and the operation does not meet the description of a system that is presumptively urban rapid transit (see below), FRA will determine whether a system is commuter or urban rapid transit by analyzing all of the system's pertinent facts. FRA is likely to consider an operation to be a commuter railroad if:

- The system serves an urban area, its suburbs, and more distant outlying communities in the greater metropolitan area,
- The system's primary function is moving passengers back and forth between their places of employment in the city and their homes within the greater metropolitan area, and moving passengers from station to station within the immediate urban area is, at most, an incidental function, and

• The vast bulk of the system's trains are operated in the morning and evening peak periods with few trains at other hours.

Examples of commuter railroads include Metra and the Northern Indiana Commuter Transportation District in the Chicago area; Virginia Railway Express and MARC in the Washington area; and Metro-North, the Long Island Railroad, New Jersey Transit, and the Port Authority Trans Hudson (PATH) in the New York area.

Other Short Haul Passenger Service

The federal railroad safety statutes give FRA authority over ''commuter or other short-haul railroad passenger service in a metropolitan or suburban area.'' 49 U.S.C. 20102. This means that, in addition to commuter service, there are other short-haul types of service that Congress intended that FRA reach. For example, a passenger system designed primarily to move intercity travelers from a downtown area to an airport, or from an airport to a resort area, would be one that does not have the transportation of commuters within a metropolitan area as its primary purpose. FRA would ordinarily exercise jurisdiction over such a system as ''other short-haul service'' unless it meets the definition of urban rapid transit and is not connected in a significant way to the general system.

Urban Rapid Transit Operations

One type of short-haul passenger service requires special treatment under the safety statutes: ''rapid transit operations in an urban area.'' Only these operations are excluded from FRA's jurisdiction, and only if they are ''not connected to the general railroad system.'' FRA will presume that an operation is an urban rapid transit operation if the system is not presumptively a commuter railroad (see discussion above) the operation is a subway or elevated operation with its own track system on which no other railroad may operate, has no highway-rail crossings at grade, operates within an urban area, and moves passengers from station to station within the urban area as one of its major functions.

Where neither the commuter railroad nor urban rapid transit presumptions applies, FRA will look at all of the facts pertinent to a particular operation to determine its proper characterization. FRA is likely to consider an operation to be urban rapid transit if:

• The operation serves an urban area (and may also serve its suburbs),

• Moving passengers from station to station within the urban boundaries is a major function of the system and there are multiple station stops within the city for that purpose (such an operation could still have the transportation of commuters as one of its major functions without being considered a commuter railroad), and

• The system provides frequent train service even outside the morning and evening peak periods.

Examples of urban rapid transit systems include the Metro in the Washington, D.C. area, CTA in Chicago, and the subway systems in New York, Boston, and Philadelphia. The type of equipment used by such a system is not determinative of its status. However, the kinds of vehicles ordinarily associated with street railways, trolleys, subways, and elevated railways are the types of vehicles most often used for urban rapid transit operations.

FRA can exercise jurisdiction over a rapid transit operation only if it is connected to the general railroad system, but need not exercise jurisdiction over every such operation that is so connected. FRA is aware of several different ways that rapid transit operations can be connected to the general system. Our policy on the exercise of jurisdiction will depend upon the nature of the connection(s). In general, a connection that involves operation of transit equipment as a part of, or over the lines of, the general system will trigger FRA's exercise of jurisdiction. Below, we review some of the more common types of connections and their effect on the agency's exercise of jurisdiction. This is not meant to be an exhaustive list of connections.

Rapid Transit Connections Sufficient to Trigger FRA's Exercise of Jurisdiction

Certain types of connections to the general railroad system will cause FRA to exercise jurisdiction over the rapid transit line *to the extent it is connected.* FRA will exercise jurisdiction over the portion of a rapid transit operation that is conducted as a part of or over the lines of the general system. For example, rapid transit operations are conducted on the lines of the general system where the rapid transit operation and other railroad use the same track. FRA will exercise its jurisdiction over the operations conducted on the general system. In situations involving joint use of the same track, it does not matter that the rapid transit operation occupies the track only at times when the freight, commuter, or intercity passenger railroad that shares the track is not operating. While such time separation could provide the basis for waiver of certain of FRA's rules (see 49 CFR part 211), it does not mean that FRA will not exercise jurisdiction. However, FRA will exercise jurisdiction over only the portions of the rapid transit operation that are conducted on the general system. For example, a rapid transit line that operates over the general system for a portion of its length but has significant portions of street railway that are not used by conventional railroads would be subject to FRA's rules only with respect to the general system portion. The remaining portions would not be subject to FRA's rules. If the non-general system portions of the rapid transit line are considered a ''rail fixed guideway system'' under 49 CFR Part 659, those rules, issued by the Federal Transit Administration (FTA), would apply to them.

Another connection to the general system sufficient to warrant FRA's exercise of jurisdiction is a railroad crossing at grade where the rapid transit operation and other railroad cross each other's tracks. In this situation, FRA will exercise its jurisdiction sufficiently to assure safe operations over the at-grade railroad crossing. FRA will also exercise jurisdiction to a limited extent over a rapid transit operation that, while not operated on the same tracks as the conventional railroad, is connected to the general system by virtue of operating in a shared right-of-way involving joint control of trains. For example, if a rapid transit line and freight railroad were to operate over a movable bridge and were subject to the same authority concerning its use (*e.g.,* the same tower operator controls trains of both operations), FRA will exercise jurisdiction in a manner sufficient to ensure safety at this point of connection. Also, where transit operations share highway-rail grade crossings with conventional railroads, FRA expects both systems to observe its signal rules. For example, FRA expects both railroads to observe the provision of its rule on grade crossing signals that requires prompt reports of warning system malfunctions. *See* 49 CFR part 234. FRA believes these connections present sufficient intermingling of the rapid transit and general system operations to pose significant hazards to one or both operations and, in the case of highway-rail grade crossings, to the motoring public. The safety of highway users of highway-rail grade crossings can best be protected if they get the same signals concerning the presence of any rail vehicles at the crossing and if they can react the same way to all rail vehicles.

Rapid Transit Connections Not Sufficient to Trigger FRA's Exercise of Jurisdiction

Although FRA could exercise jurisdiction over a rapid transit

operation based on any connection it has to the general railroad system, FRA believes there are certain connections that are too minimal to warrant the exercise of its jurisdiction. For example, a rapid transit system that has a switch for receiving shipments from the general system railroad is not one over which FRA would assert jurisdiction. This assumes that the switch is used only for that purpose. In that case, any entry onto the rapid transit line by the freight railroad would be for a very short distance and solely for the purpose of dropping off or picking up cars. In this situation, the rapid transit line is in the same situation as any shipper or consignee; without this sort of connection, it cannot receive or offer goods by rail.

Mere use of a common right-of-way or corridor in which the conventional railroad and rapid transit operation do not share any means of train control, have a rail crossing at grade, or operate over the same highway-rail grade crossings would not trigger FRA's exercise of jurisdiction. In this context, the presence of intrusion detection devices to alert one or both carriers to incursions by the other one would not be considered a means of common train control. These common rights of way are often designed so that the two systems function completely independently of each other. FRA and FTA will coordinate with rapid transit agencies and railroads wherever there are concerns about sufficient intrusion detection and related safety measures designed to avoid a collision between rapid transit trains and conventional equipment.

Where these very minimal connections exist, FRA will not exercise jurisdiction unless and until an emergency situation arises involving such a connection, which is a very unlikely event. However, if such a system is properly considered a rail fixed guideway system, FTA's rules (49 CFR part 659) will apply to it.

Coordination of the FRA and FTA Programs

FTA's rules on rail fixed guideway systems (49 CFR part 659) apply to any rapid transit systems or portions thereof not subject to FRA's rules. On rapid transit systems that are not sufficiently connected to the general railroad system to warrant FRA's exercise of jurisdiction (as explained above), FTA's rules will apply exclusively. On those rapid transit systems that are connected to the general system in such a way as warrant exercise of FRA's jurisdiction, only those portions of the rapid transit system that are connected to the general system will generally be subject to FRA's rules.

A rapid transit railroad may apply to FRA for a waiver of any FRA regulations. *See* 49 CFR part 211. FRA will seek FTA's views whenever a rapid transit operation petitions FRA for a waiver of its safety rules. In granting or denying any such waiver, FRA will make clear whether its rules do not apply to any segments of the operation so that it is clear where FTA's rules do apply.

5. The authority citation for part 211 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20114, 20306, 20502–20504, and 49 CFR 1.49.

Appendix A

6. A new Appendix A is added to part 211 to read as follows.

Appendix A to Part 211—Statement of Agency Policy Concerning Waivers Related to Shared Use of Trackage or Rights-of-Way by Light Rail and Conventional Operations

1. By statute, the Federal Railroad Administration (FRA) may grant a waiver of any rule or order if the waiver ''is in the public interest and consistent with railroad safety.'' 49 U.S.C. 20103(d). Waiver petitions are reviewed by FRA's Railroad Safety Board (the ''Safety Board'') under the provisions of 49 CFR part 211. Waiver petitions must contain the information required by 49 CFR 211.9. The Safety Board can, in granting a waiver, impose any conditions it concludes are necessary to assure safety or are in the public interest. If the conditions under which the waiver was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety.

2. Light rail equipment, commonly referred to as trolleys or street railways, is not designed to be used in situations where there is a reasonable likelihood of a collision with much heavier and stronger conventional rail equipment. However, existing conventional railroad tracks and rights-of-way provide attractive opportunities for expansion of light rail service.

3. Light rail operators who intend to share use of the general railroad system trackage with conventional equipment and/or whose operations constitute commuter service (*see* Appendix A of 49 CFR part 209 for relevant definitions) will either have to comply with FRA's safety rules or obtain a waiver of appropriate rules. Light rail operators whose operations meet the definition of urban rapid transit and who will share a right-of-way or corridor with a conventional railroad but will not share trackage with that railroad will be subject to only those rules that pertain to any significant point of connection to the general system, such as a rail crossing at grade, a shared method of train control, or shared highway-rail grade crossings.

4. Shared use of track refers to situations where light rail transit operators conduct their operations over the lines of the general system, and includes light rail operations that are wholly separated in time (temporally separated) from conventional operations as well as light rail operations operating on the same trackage at the same time as conventional rail equipment (simultaneous joint use). Where shared use of general system trackage is contemplated, FRA believes a comprehensive waiver request covering all rules for which a waiver is sought makes the most sense. FRA suggests that a petitioner caption such a waiver petition as a Petition for Approval of Shared Use so as to distinguish it from other types of waiver petitions. The light rail operator should file the petition. All other affected railroads will be able to participate in the waiver proceedings by commenting on the petition and providing testimony at a hearing on the petition if anyone requests such a hearing. If any other railroad will be affected by the proposed operation in such a way as to necessitate a waiver of any FRA rule, that railroad may either join with the light rail operator in filing the comprehensive petition or file its own petition.

5. In situations where the light rail operator is an urban rapid transit system that will share a right-of-way or corridor with the conventional railroad but not share trackage, any waiver petition should cover only the rules that may apply at any significant points of connection between the rapid transit line and the other railroad. A Petition for Approval of Shared Use would not be appropriate in such a case.

I. Preliminary Jurisdictional Determinations

Where a light rail operator is uncertain whether the planned operation will be subject to FRA's safety jurisdiction and, if so, to what extent, the operator may wish to obtain FRA's views on the jurisdictional issues before filing a waiver petition. In that case, the light rail operator (here including a transit authority that may not plan to actually operate the system itself) should write to FRA requesting such a determination. The letter should be addressed to Chief Counsel, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 10, Washington, DC 20590, with a copy to the Associate Administrator for Safety at the same address at Mail Stop 25. The letter should address the criteria (found in 49 CFR part 209, appendix A) FRA uses to determine whether it has jurisdiction over a rail operation and to distinguish commuter from urban rapid transit service. A complete description of the nature of the contemplated operation is essential to an accurate determination. FRA will attempt to respond promptly to such a request. Of course, FRA's response will be based only on the facts as presented by the light rail operator. If FRA subsequently learns that the facts are different from those presented or have changed substantially, FRA may revise its initial determination.

II. General Factors to Address in a Petition for Approval of Shared Use

1. Like all waiver petitions, a Petition for Approval of Shared Use will be reviewed by the Safety Board. A non-voting FTA liaison to the Safety Board will participate in an

advisory capacity in the Safety Board's consideration of all such petitions. This close cooperation between the two agencies will ensure that FRA benefits from the insights, particularly with regard to operational and financial issues, that FTA can provide about light rail operations, as well as from FTA's knowledge of and contacts with state safety oversight programs. This working relationship will also ensure that FTA has a fuller appreciation of the safety issues involved in each specific shared use operation and a voice in shaping the safety requirements that will apply to such operations.

2. FRA resolves each waiver request on its own merits based on the information presented and the agency's own investigation of the issues. In general, the greater the safety risks inherent in a proposed operation the greater will be the mitigation measures required. While FRA cannot state in advance what kinds of waivers will be granted or denied, we can provide guidance to those who may likely be requesting waivers to help ensure that their petitions address factors that FRA will no doubt consider important.

3. FRA's procedural rules give a general description of what any waiver petition should contain, including an explanation of the nature and extent of the relief sought; a description of the persons, equipment, installations, and locations to be covered by the waiver; an evaluation of expected costs and benefits; and relevant safety data. 49 CFR 211.9. The procedural rules, of course, are not specifically tailored to situations involving light rail operations over the general system, where waiver petitions are likely to involve many of FRA's regulatory areas. In such situations, FRA suggests that a Petition for Approval of Shared Use address the following general factors.

A. *Description of operations.* You should explain the frequency and speeds of all operations on the line and the nature of the different operations. You should explain the nature of any connections between the light rail and conventional operations.

- If the light rail line will operate on any segments (*e.g.,* a street railway portion) that will not be shared by a conventional railroad, describe those segments and their connection with the shared use segments. If the petitioner has not previously sought and received a determination from FRA concerning jurisdictional issues, explain, using the criteria set out in 49 CFR part 209, Appendix A, whether the light rail operation is, in the petitioner's view, a commuter operation or urban rapid transit.
- You should describe precisely what the respective hours of operation will be for each type of equipment on the shared use segments. If light rail and conventional operations will occur only at different times of day, describe what means of protection will ensure that the different types of equipment are not operated simultaneously on the same track, and how protection will be provided to ensure that, where one set of operations begins and the other ends, there can be no overlap that would possibly result in a collision.
- If the light rail and conventional operations will share trackage during the same time periods, the petitioners will face a steep burden of demonstrating that extraordinary safety measures will be taken to adequately reduce the likelihood of a collision between conventional and light rail equipment to the point where the safety risks associated with joint use would be acceptable. You should explain the nature of such simultaneous joint use, the system of train control, the frequency and proximity of both types of operations, the training and qualifications of all operating personnel in both types of operations, and all methods that would be used to prevent collisions. You should also include a quantitative risk assessment concerning the risk of collision between the light rail and conventional equipment under the proposed operating scenario.

B. *Description of equipment.* (1) You should describe all equipment that will be used by the light rail and conventional operations. Where the light rail equipment does not meet the standards of 49 CFR part 238, you should provide specifics on the crash survivability of the light rail equipment, such as static end strength, sill height, strength of corner posts and collision posts, side strength, etc.

(2) Given the structural incompatibility of light rail and conventional equipment, FRA has grave concerns about the prospect of operating these two types of equipment simultaneously on the same track. If the light rail and conventional operations will share trackage during the same time periods, you should provide an engineering analysis of the light rail equipment's resistance to damage in various types of collisions, including a worst case scenario involving a failure of the collision avoidance systems resulting in a collision between light rail and conventional equipment at track speeds.

C. *Alternative safety measures to be employed in place of each rule for which waiver is sought.* The petition should specify exactly which rules the petitioner desires to be waived. For each rule, the petition should explain exactly how a level of safety at least equal to that afforded by the FRA rule will be provided by the alternative measures the petitioner proposes.

(1) Most light rail operations that entail some shared use of the general system will also have segments that are not on the general system. FTA's rules on rail fixed guideway systems will probably apply to those other segments. If so, the petition for waiver of FRA's rules should explain how the system safety program plan adopted under FTA's rules may affect safety on the portions of the system where FRA's rules apply. Under certain circumstances, effective implementation of such a plan may provide FRA sufficient assurance that adequate measures are in place to warrant waiver of certain FRA rules.

(2) In its petition, the light rail operator may want to certify that the subject matter addressed by the rule to be waived is addressed by the system safety plan and that the light rail operation will be monitored by the state safety oversight program. That is likely to expedite FRA's processing of the petition. FRA will analyze information submitted by the petitioner to demonstrate that a safety matter is addressed by the light rail operator's system safety plan. Alternately, conditional approval may be requested at an early stage in the project, and FRA would thereafter review the system safety program plan's status to determine readiness to commence operations. Where FRA grants a waiver, the state agency will oversee the area addressed by the waiver, but FRA will actively participate in partnership with FTA and the state agency to address any safety problems.

D. *Documentation of agreement with affected railroads.* Conventional railroads that will share track with the light rail operation need not join as a co-petitioner in the light rail operator's petition. However, the petition should contain documentation of the precise terms of the agreement between the light rail operator and the conventional railroad concerning any actions that the conventional railroad must take to ensure effective implementation of alternative safety measures. For example, if temporal separation is planned, FRA expects to see the conventional railroad's written acceptance of its obligations to ensure that the separation is achieved. Moreover, if the arrangements for the light rail service will require the conventional railroad to employ any alternative safety measures rather than strictly comply with FRA's rules, that railroad will have to seek its own waiver (or join in the light rail operator's petition).

III. Waiver Petitions Involving No Shared Use of Track and Limited Connections Between Light Rail and Conventional Operations

Even where there is no shared use of track, light rail operators may be subject to certain FRA rules based on limited, but significant connections to the general system.

1. *Rail crossings at grade.* Where a light rail operation and a conventional railroad have a crossing at grade, several FRA rules may apply to the light rail operation at the point of connection. If movements at the crossing are governed by a signal system, FRA's signal rules (49 CFR parts 233, 235, and 236) apply, as do the signal provisions of the hours of service statute, 49 U.S.C. 21104. To the extent radio communication is used to direct the movements, the radio rules (part 220) apply. The track rules (part 213) cover any portion of the crossing that may affect the movement of the conventional railroad. Of course, if the conventional railroad has responsibility for compliance with certain of the rules that apply at that point (for example, where the conventional railroad maintains the track and signals and dispatches all trains), the light rail operator will not have compliance responsibility for those rules and would not need a waiver.

2. *Shared train control systems.* Where a light rail operation is governed by the same train control system as a conventional railroad (e.g., at a moveable bridge that they both traverse), the light rail operator will be subject to applicable FRA rules (primarily the signal rules in parts 233, 235, and 236) if it has maintenance or operating responsibility for the system.

3. *Highway-Rail Grade Crossings.* Light rail operations over highway-rail grade crossings

also used by conventional trains will be subject to FRA's rules on grade crossing signal system safety (part 234) and the requirement to have auxiliary lights on locomotives (49 CFR 229.125). Even if the conventional railroad maintains the crossing, the light rail operation will still be responsible for reporting and taking appropriate actions in response to warning system malfunctions.

In any of these shared right-of-way situations involving significant connections, the light rail operator may petition for a waiver of any rules that apply to its activities.

IV. Factors to Address Related to Specific Regulations and Statutes

Operators of light rail systems are likely to apply for waivers of many FRA rules. FRA offers the following suggestions on factors petitioners may want to address concerning specific areas of regulation. (All ''part'' references are to title 49 CFR.) Parts 209 (Railroad Safety Enforcement Procedures), 211 (Rules of Practice), 212 (State Safety Participation), and 216 (Special Notice and Emergency Order Procedures) are largely procedural rules that are unlikely to be the subject of waivers, so those parts are not discussed further. For segments of a light rail line not involving operations over the general system, assuming the light rail operation meets the definition of ''rapid transit,'' FRA's standards do not apply and the petition need not address those segments with regard to each specific rule from which waivers are sought with regard to shared use trackage.

1. Track, structures, and signals.

A. *Track safety standards (part 213).* For general system track used by both the conventional and light rail lines, the track standards apply and a waiver is very unlikely. A light rail operation that owns track over which the conventional railroad operates may wish to consider assigning responsibility for that track to the other railroad. If so, the track owner must follow the procedure set forth in 49 CFR 213.5(c). Where such an assignment occurs, the owner and assignee are responsible for compliance.

B. *Signal systems reporting requirements (part 233).* This part contains reporting requirements with respect to methods of train operation, block signal systems, interlockings, traffic control systems, automatic train stop, train control, and cab signal systems, or other similar appliances, methods, and systems. If a signal system failure occurs on general system track which is used by both conventional and light rail lines, and triggers the reporting requirements of this part, the light rail operator must file, or cooperate fully in the filing of, a signal system report. The petition should explain whether the light rail operator or conventional railroad is responsible for maintaining the signal system. Assuming that the light rail operator (or a contractor hired by this operator) has responsibility for maintaining the signal system, that entity is the logical choice to file each signal failure report, and a waiver is very unlikely. Moreover, since a signal failure first observed by a light rail operator can later have catastrophic consequences for a conventional railroad using the same track, a waiver would jeopardize rail safety on that general system trackage. Even if the conventional railroad is responsible for maintaining the signal systems, the light rail operator must still assist the railroad in reporting all signal failures by notifying the conventional railroad of such failures.

C. *Grade crossing signal system safety (part 234).* This part contains minimum standards for the maintenance, inspection, and testing of highway-rail grade crossing warning systems, and also prescribes standards for the reporting of system failures and minimum actions that railroads must take when such warning systems malfunction. If a grade crossing accident or warning activation failure occurs during light rail operations on general system track that is used by both conventional and light rail lines, the light rail operator must submit, or cooperate with the other railroad to ensure the submission of, a report to FRA within the required time frame (24 hours for an accident report, or 15 days for a grade crossing signal system activation failure report). The petition should explain whether the light rail operator or conventional railroad is responsible for maintaining the grade crossing devices. Assuming that the light rail operator (or a contractor hired by this operator) has responsibility for maintaining the grade crossing devices, that entity is the logical choice to file each grade crossing signal failure report, and a waiver is very unlikely. Moreover, since a grade crossing warning device failure first observed by a light rail operator can later have catastrophic consequences for a conventional railroad using the same track, a waiver would jeopardize rail safety on that general system trackage. However, if the conventional railroad is responsible for maintaining the grade crossing devices, the light rail operator will still have to assist the railroad in reporting all grade crossing signal failures. Moreover, regardless of which railroad is responsible for maintenance of the grade crossing signals, any railroad (including a light rail operation) operating over a crossing that has experienced an activation failure, partial activation, or false activation must take the steps required by this rule to ensure safety at those locations. While the maintaining railroad will retain all of its responsibilities in such situations (such as contacting train crews and notifying law enforcement agencies), the operating railroad must observe requirements concerning flagging, train speed, and use of the locomotive's audible warning device.

D. *Approval of signal system modifications (part 235).* This part contains instructions governing applications for approval of a discontinuance or material modification of a signal system or relief from the regulatory requirements of part 236. In the case of a signal system located on general system track which is used by both conventional and light rail lines, a light rail operation is subject to this part only if it (or a contractor hired by the operator) owns or has responsibility for maintaining the signal system. If the conventional railroad does the maintenance, then that railroad would file any application submitted under this part; the light rail operation would have the right to protest the application under § 235.20. The petition should discuss whether the light rail operator or conventional railroad is responsible for maintaining the signal system.

E. *Standards for signal and train control systems (part 236).* This part contains rules, standards, and instructions governing the installation, inspection, maintenance, and repair of signal and train control systems, devices, and appliances. In the case of a signal system located on general system track which is used by both conventional and light rail lines, a light rail operation is subject to this part only if it (or a contractor hired by the operation) owns or has responsibility for installing, inspecting, maintaining, and repairing the signal system. If the light rail operation has these responsibilities, a waiver would be unlikely because a signal failure would jeopardize the safety of both the light rail operation and the conventional railroad. If the conventional railroad assumes all of the responsibilities under this part, the light rail operation would not need a waiver, but it would have to abide by all operational limitations imposed this part and by the conventional railroad. The petition should discuss whether the light rail operator or conventional railroad has responsibility for installing, inspecting, maintaining, and repairing the signal system. 2.

2. Motive power and equipment.

A. *Railroad noise emission compliance regulations (part 210).* FRA issued this rule under the Noise Control Act of 1972, 42 U.S.C. 4916, rather than under its railroad safety authority. Because that statute included a definition of ''railroad'' borrowed from one of the older railroad safety laws, this part has an exception for ''street, suburban, or interurban electric railways unless operated as a part of the general railroad system of transportation.'' 49 CFR 210.3(b)(2). The petition should address whether this exception may apply to the light rail operation. Note that this exception is broader than the sole exception to the railroad safety statutes (i.e., urban rapid transit not connected to the general system). The greater the integration of the light rail and conventional operations, the less likely this exception would apply.

If the light rail equipment would normally meet the standards in this rule, there would be no reason to seek a waiver of it. If it appears that the light rail system would neither meet the standards nor fit within the exception, the petition should address noise mitigation measures used on the system, especially as part of a system safety program. Note, however, that FRA lacks the authority to waive certain Environmental Protection Agency standards (40 CFR part 201) that underlie this rule. See 49 CFR 210.11(a).

B. *Railroad freight car safety standards (part 215).* A light rail operator is likely to move freight cars only in connection with maintenance-of-way work. As long as such cars are properly stenciled in accordance with section 215.305, this part does not otherwise apply, and a waiver would seem unnecessary.

C. *Rear end marking devices (part 221).* This part requires that each train occupying

or operating on main line track be equipped with, display, and continuously illuminate or flash a marking device on the trailing end of the rear car during periods of darkness or other reduced visibility. The device, which must be approved by FRA, must have specific intensity, beam arc width, color, and flash rate characteristics. A light rail operation seeking a waiver of this part will need to explain how other marking devices with which it equips its vehicles, or other means such as train control, will provide the same assurances as this part of a reduced likelihood of collisions attributable to the failure of an approaching train to see the rear end of a leading train in time to stop short of it during periods of reduced visibility. The petition should describe the light rail vehicle's existing marking devices (e.g., headlights, brakelights, taillights, turn signal lights), and indicate whether the vehicle bears reflectors. If the light rail system will operate in both a conventional railroad environment and in streets mixed with motor vehicles, the petition should discuss whether adapting the design of the vehicle's lighting characteristics to conform to FRA's regulations would adversely affect the safety of its operations in the street environment. A light rail system that has a system safety program developed under FTA's rules may choose to discuss how that program addresses the need for equivalent levels of safety when its vehicles operate on conventional railroad corridors.

D. *Safety glazing standards (part 223).* This part provides that passenger car windows be equipped with FRA-certified glazing materials in order to reduce the likelihood of injury to railroad employees and passengers from the breakage and shattering of windows and avoid ejection of passengers from the vehicle in a collision. This part, in addition to requiring the existence of at least four emergency windows, also requires window markings and operating instructions for each emergency window, as well as for each window intended for emergency access, so as to provide the necessary information for evacuation of a passenger car. FRA will not permit operations to occur on the general system in the absence of effective alternatives to the requirements of this part that provide an equivalent level of safety. The petition should explain what equivalent safeguards are in place to provide the same assurance as part 223 that passengers and crewmembers are safe from the effects of objects striking a light rail vehicle's windows. The petition should also discuss the design characteristics of its equipment when it explains how the safety of its employees and passengers will be assured during an evacuation in the absence of windows meeting the specific requirements of this part. A light rail system that has a system safety program plan developed under FTA's rule may be able to demonstrate that the plan satisfies the safety goals of this part.

E. *Locomotive safety standards (part 229).* (1) This part contains minimum safety standards for all locomotives, except those propelled by steam power. FRA recognizes that due to the unique characteristics of light rail equipment, some of these provisions may be irrelevant to light rail equipment, and that others may not fit properly in the context of light rail operations. A waiver petition should explain precisely how the light rail system's practices will provide for the safe condition and operation of its locomotive equipment.

(2) FRA is not likely to waive completely the provision (section 229.125) of this rule concerning auxiliary lights designed to warn highway motorists of an approaching train. In order to reduce the risk of grade crossing accidents, it is important that all locomotives used by both conventional railroads and light rail systems present the same distinctive profile to motor vehicle operators approaching grade crossings on the general railroad system. If uniformity is sacrificed by permitting light rail systems to operate locomotives through the same grade crossings traversed by conventional trains with light arrangements placed in different locations on the equipment, safety could be compromised. Accordingly, the vehicle design should maintain the triangular pattern required of other locomotives and cab cars to the extent practicable.

(3) FRA is aware that light rail headlights are likely to produce less than 200,000 candela. While some light rail operators may choose to satisfy the requirements of section 229.125 by including lights on their equipment of different candlepower controlled by dimmer switches, the headlights on the majority of light rail vehicles will likely not meet FRA's minimum requirement. However, based on the nature of the operations of light rail transit, FRA recognizes that waivers of the minimum candela requirement for transit vehicle headlights seems appropriate.

F. *Safety appliance laws (49 U.S.C. 20301–20305).* (1) Since certain safety appliance requirements (e.g., automatic couplers) are statutory, they can only be ''waived'' by FRA under the exemption conditions set forth in 49 U.S.C. 20306. Because exemptions requested under this statutory provision do not involve a waiver of a safety rule, regulation, or standard (see 49 CFR 211.41), FRA is not required to follow the rules of practice for waivers contained in part 211. However, whenever appropriate, FRA will combine its consideration of any request for an exemption under § 20306 with its review under part 211 of a light rail operation's petition for waivers of FRA's regulations.

(2) FRA may grant exemptions from the statutory safety appliance requirements in 49 U.S.C. 20301–20305 only if application of such requirements would ''preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations.'' 49 U.S.C. 20306. The exemption for technological improvements was originally enacted to further the implementation of a specific type of freight car, but the legislative history shows that Congress intended the exemption to be used elsewhere so that ''other types of railroad equipment might similarly benefit.'' S. Rep. 96–614 at 8 (1980), reprinted in 1980 U.S.C.C.A.N. 1156,1164.

(3) FRA recognizes the potential public benefits of allowing light rail systems to take advantage of underutilized urban freight rail corridors to provide service that, in the absence of the existing right-of-way, would be prohibitively expensive. Any petitioner requesting an exemption for technological improvements should carefully explain how being forced to comply with the existing statutory safety appliance requirements would conflict with the exemption exceptions set forth at 49 U.S.C. 20306. The petition should also show that granting the exemption is in the public interest and is consistent with assuring the safety of the light rail operator's employees and passengers.

G. *Safety appliance standards (part 231).* (1) The regulations in this part specify the requisite location, number, dimensions, and manner of application of a variety of railroad car safety appliances (e.g., handbrakes, ladders, handholds, steps), and directly implement a number of the statutory requirements found in 49 U.S.C. 20301–20305. These very detailed regulations are intended to ensure that sufficient safety appliances are available and able to function safely and securely as intended.

(2) FRA recognizes that due to the unique characteristics of light rail equipment, some of these provisions may be irrelevant to light rail operation, and that others may not fit properly in the context of light rail operations (e.g., crewmembers typically do not perform yard duties from positions outside and adjacent to the light rail vehicle or near the vehicle's doors). However, to the extent that the light rail operation encompasses the safety risks addressed by the regulatory provisions of this part, a waiver petition should explain precisely how the light rail system's practices will provide for the safe operation of its passenger equipment. The petition should focus on the design specifications of the equipment, and explain how the light rail system's operating practices, and its intended use of the equipment, will satisfy the safety purpose of the regulations while providing at least an equivalent level of safety.

H. *Passenger equipment safety standards (part 238).* This part prescribes minimum Federal safety standards for railroad passenger equipment. Since a collision on the general railroad system between light rail equipment and conventional rail equipment could prove catastrophic, because of the significantly greater mass and structural strength of the conventional equipment, a waiver petition should describe the light rail operation's system safety program that is in place to minimize the risk of such a collision. The petition should discuss the light rail operation's operating rules and procedures, train control technology, and signal system. If the light rail operator and conventional railroad will operate simultaneously on the same track, the petition should include a quantitative risk assessment that incorporates design information and provide an engineering analysis of the light rail equipment and its likely performance in derailment and collision scenarios. The petitioner should also demonstrate that risk mitigation measures to avoid the possibility of collisions, or to limit the speed at which a collision might occur , will be employed in connection with the use of the equipment on a specified shared-use rail line. This part also

contains requirements concerning power brakes on passenger trains, and a petitioner seeking a waiver in this area should refer to these requirements, not those found in 49 CFR part 232.

3. Operating practices.

A. *Railroad workplace safety (part 214).* (1) This part contains standards for protecting bridge workers and roadway workers. The petition should explain whether the light rail operator or conventional railroad is responsible for bridge work on shared general system trackage. If the light rail operator does the work and does similar work on segments outside of the general system, it may wish to seek a waiver permitting it to observe OSHA standards throughout its system.

(2) There are no comparable OSHA standards protecting roadway workers. The petition should explain which operator is responsible for track and signal work on the shared segments. If the light rail operator does this work, the petition should explain how the light rail operator protects these workers. However, to the extent that protection varies significantly from FRA's rules, a waiver permitting use of the light rail system's standards could be very confusing to train crews of the conventional railroad who follow FRA's rules elsewhere. A waiver of this rule is unlikely. A petition should address how such confusion would be avoided and safety of roadway workers would be ensured.

B. *Railroad operating rules (part 217).* This part requires filing of a railroad's operating rules and that employees be instructed and tested on compliance with them. A light rail operation would not likely have difficulty complying with this part. However, if a waiver is desired, the light rail system should explain how other safeguards it has in place provide the same assurance that operating employees are trained and periodically tested on the rules that govern train operation. A light rail system that has a system safety program plan developed under FTA's rules may be in a good position to give such an assurance.

C. *Railroad operating practices (part 218).* This part requires railroads to follow certain practices in various aspects of their operations (protection of employees working on equipment, protection of trains and locomotives from collisions in certain situations, prohibition against tampering with safety devices, protection of occupied camp cars). Some of these provisions (*e.g.*, camp cars) may be irrelevant to light rail operations. Others may not fit well in the context of light rail operations. To the extent the light rail operation presents the risks addressed by the various provisions of this part, a waiver provision should explain precisely how the light rail system's practices will address those risks. FRA is not likely to waive the prohibition against tampering with safety devices, which would seem to present no particular burden to light rail operations. Moreover, blue signal regulations, which protect employees working on or near equipment, are not likely to be waived to the extent that such work is performed on track shared by a light rail operation and a conventional railroad, where safety may best be served by uniformity.

D. *Control of alcohol and drug use (part 219).* FRA will not permit operations to occur on the general system in the absence of effective rules governing alcohol and drug use by operating employees. FTA's own rules may provide a suitable alternative for a light rail system that is otherwise governed by those rules. However, to the extent that light rail and conventional operations occur simultaneously on the same track, FRA is not likely to apply different rules to the two operations, particularly with respect to post-accident testing, for which FRA requirements are more extensive (e.g., section 219.11(f) addresses the removal, under certain circumstances, of body fluid and/or tissue samples taken from the remains of any railroad employee who performs service for a railroad). (FRA recognizes that in the event of a fatal train accident involving a transit vehicle, whether involving temporal separation or simultaneous use of the same track, the National Transportation Safety Board will likely investigate and obtain its own toxicology test results.)

E. *Railroad communications (part 220).* A light rail operation is likely to have an effective system of radio communication that may provide a suitable alternative to FRA's rules. However, the greater the need for radio communication between light rail personnel (*e.g.*, train crews or dispatchers) and personnel of the conventional railroad (*e.g.*, train crews, roadway workers), the greater will be the need for standardized communication rules and, accordingly, the less likely will be a waiver.

F. *Railroad accident/incident reporting (part 225).* (1) FRA's accident/incident information is very important in the agency's decisionmaking on regulatory issues and strategic planning. A waiver petition should indicate precisely what types of accidents and incidents it would report, and to whom, under any alternative it proposes. FRA is not likely to waive its reporting requirements concerning train accidents or highway-rail grade crossing collisions that occur on the general railroad system. Reporting of accidents under FTA's rules is quite different and would not provide an effective substitute. However, with regard to employee injuries, the light rail operation may, absent FRA's rules, otherwise be subject to reporting requirements of FTA and OSHA and may have an interest in uniform reporting of those injuries wherever they occur on the system. Therefore, it is more likely that FRA would grant a waiver with regard to reporting of employee injuries.

(2) Any waiver FRA may grant in the accident/incident reporting area would have no effect on FRA's authority to investigate such incidents or on the duties of light rail operators and any other affected railroads to cooperate with those investigations. See sections 225.31 and 225.35 and 49 U.S.C. 20107 and 20902. Light rail operators should anticipate that FRA will investigate any serious accident or injury that occurs on the shared use portion of their lines, even if it occurs during hours when only the light rail trains are operating. Moreover, there may be instances when FRA will work jointly with FTA and the state agency to investigate the cause of a transit accident that occurs off the general system under circumstances that raise concerns about the safety of operations on the shared use portions. For example, if a transit operator using the same light rail equipment on the shared and non-shared-use portions of its operation has a serious accident on the non-shared-use portion, FRA may want to determine whether the cause of the accident pointed to a systemic problem with the equipment that might impact the transit system's operations on the general system. Similarly, where human error might be a factor, FRA may want to determine whether the employee potentially at fault also has safety responsibilities on the general system and, if so, take appropriate action to ensure that corrective action is taken. FRA believes its statutory investigatory authority extends as far as necessary to address any condition that might reasonably be expected to create a hazard to railroad operations within its jurisdiction.

G. *Hours of service laws (49 U.S.C. 21101–21108).* (1) The hours of service laws apply to all railroads subject to FRA's jurisdiction, and govern the maximum work hours and minimum off-duty periods of employees engaged in one or more of the three categories of covered service described in 49 U.S.C. 21101. If an individual performs more than one kind of covered service during a tour of duty, then the most restrictive of the applicable limitations control. Under current law, a light rail operation could request a waiver of the substantive provisions of the hours of service laws only under the ''pilot project'' provision described in 49 U.S.C. 21108, provided that the request is based upon a joint petition submitted by the railroad and its affected labor organizations. Because waivers requested under this statutory provision do not involve a waiver of a safety rule, regulation, or standard (see 49 CFR 211.41), FRA is not required to follow the rules of practice for waivers contained in part 211. However, whenever appropriate, FRA will combine its consideration of any request for a waiver under § 21108 with its review under part 211 of a light rail operation's petition for waivers of FRA's regulations.

(2) If such a statutory waiver is desired, the light rail system will need to assure FRA that the waiver of compliance is in the public interest and consistent with railroad safety. The waiver petition should include a discussion of what fatigue management strategies will be in place for each category of covered employees in order to minimize the effects of fatigue on their job performance. However, FRA is unlikely to grant a statutory waiver covering employees of a light rail operation who dispatch the trains of a conventional railroad or maintain a signal system affecting shared use trackage.

H. *Hours of service recordkeeping (part 228).* This part prescribes reporting and recordkeeping requirements with respect to the hours of service of employees who perform the job functions set forth in 49 U.S.C. 21101. As a general rule, FRA anticipates that any waivers granted under this part will only exempt the same groups of employees for whom a light rail system has obtained a waiver of the substantive provisions of the hours of service laws under

49 U.S.C. 21108. Since it is important that FRA be able to verify that a light rail operation is complying with the on- and off-duty restrictions of the hour of service laws for all employees not covered by a waiver of the laws' substantive provisions, it is unlikely that any waiver granted of the reporting and recordkeeping requirements would exclude those employees. However, in a system with fixed work schedules that do not approach 12 hours on duty in the aggregate, it may be possible to utilize existing payroll records to verify compliance.

I. *Passenger train emergency preparedness (part 239).* This part prescribes minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains. FRA's expectation is that by requiring affected railroads to provide sufficient emergency egress capability and information to passengers, along with mandating that these railroads coordinate with local emergency response officials, the risk of death or injury from accidents and incidents will be lessened. A waiver petition should state whether the light rail system has an emergency preparedness plan in place under a state system safety program developed under FTA's rules for the light rail operator's separate street railway segments. Under a system safety program, a light rail operation is likely to have an effective plan for dealing with emergency situations that may provide an equivalent alternative to FRA's rules. To the extent that the light rail operation's plan relates to the various provisions of this part, a waiver petition should explain precisely how each of the requirements of this part is being addressed. The petition should especially focus on the issues of communication, employee training, passenger information, liaison relationships with emergency responders, and marking of emergency exits.

J. *Qualification and certification of locomotive engineers (part 240).* This part contains minimum Federal safety requirements for the eligibility, training, testing, certification, and monitoring of locomotive engineers. Those who operate light rail trains may have significant effects on the safety of light rail passengers, motorists at grade crossings, and, to the extent trackage is shared with conventional railroads, the employees and passengers of those railroads. The petition should describe whether a light rail system has a system safety plan developed under FTA's rules that is likely to have an effective means of assuring that the operators, or ''engineers,'' of its equipment receive the necessary training and have proper skills to operate a light rail vehicle in shared use on the general railroad system. The petition should explain what safeguards are in place to ensure that light rail engineers receive at least an equivalent level of training, testing, and monitoring on the rules governing train operations to that received by locomotive engineers employed by conventional railroads and certified under part 240. Any light rail system unable to meet this burden would have to fully comply with the requirements of part 240. Moreover, where a transit system intends to operate simultaneously on the same track with conventional equipment, FRA will not be inclined to waive the part 240 requirements. In that situation, FRA's paramount concern would be uniformity of training and qualifications of all those operating trains on the general system, regardless of the type of equipment.

V. Waivers That May be Appropriate for Time-Separated Light Rail Operations

1. The foregoing discussion of factors to address in a petition for approval of shared use concerns all such petitions and, accordingly, is quite general. FRA is willing to provide more specific guidance on where waivers may be likely with regard to light rail operations that are time-separated from conventional operations. FRA's greatest concern with regard to shared use of the general system is a collision between light rail and conventional trains on the same track. Because the results could well be catastrophic, FRA places great emphasis on avoiding such collisions. The surest way to guarantee that such collisions will not occur is to strictly segregate light rail and conventional operations by time of day so that the two types of equipment never share the same track at the same time. This is not to say that FRA will not entertain waiver petitions that rely on other methods of collision avoidance such as sophisticated train control systems. However, petitioners who do not intend to separate light rail from conventional operations by time of day will face a steep burden of demonstrating an acceptable level of safety. FRA does not insist that all risk of collision be eliminated. However, given the enormous severity of the likely consequences of a collision, the demonstrated risk of such an event must be extremely remote.

2. There are various ways of providing such strict separation by time. For example, freight operations could be limited to the hours of midnight to 5 a.m. when light rail operations are prohibited. Or, there might be both a nighttime and a mid-day window for freight operation. The important thing is that the arrangement not permit simultaneous operation on the same track by clearly defining specific segments of the day when only one type of operation may occur. Mere spacing of train movements by a train control system does not constitute this temporal separation.

3. FRA is very likely to grant waivers of many of its rules where complete temporal separation between light rail and conventional operations is demonstrated in the waiver request. The chart below lists each of FRA's railroad safety rules and provides FRA's view on whether it is likely to grant a waiver in a particular area where temporal separation is assured. Where the ''Likely Treatment'' column says ''comply'' a waiver is not likely, and where it says ''waive'' a waiver is likely. Of course, FRA will consider each petition on its own merits and one should not presume, based on the chart, that FRA will grant or deny any particular request in a petition. This chart is offered as general guidance as part of a statement of policy, and as such does not alter any safety rules or obligate FRA to follow it in every case. This chart assumes that the operations of the local rail transit agency on the general railroad system are completely separated in time from conventional railroad operations, and that the light rail operation poses no atypical safety hazards. FRA's procedural rules on matters such as enforcement (49 CFR parts 209 and 216), and its statutory authority to investigate accidents and injuries and take emergency action to address an imminent hazard of death or injury, would apply to these operations in all cases.

4. Where waivers are granted, a light rail operator would be expected to operate under a system safety plan developed in accordance with the FTA state safety oversight program. The state safety oversight agency would be responsible for the safety oversight of the light rail operation, even on the general system, with regard to aspects of that operation for which a waiver is granted. (The ''Comments'' column of the chart shows ''State Safety Oversight'' where waivers conditioned on such state oversight are likely.) FRA will coordinate with FTA and the state agency to address any serious safety problems. If the conditions under which the waiver was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety. On certain subjects where waivers are not likely, the ''Comments'' column of the chart makes special note of some important regulatory requirements that the light rail system will have to observe even if it is not primarily responsible for compliance with that particular rule.

POSSIBLE WAIVERS FOR LIGHT RAIL OPERATIONS ON THE GENERAL RAILROAD SYSTEM BASED ON SEPARATION IN TIME FROM CONVENTIONAL OPERATIONS

Title 49 CFR part	Subject of rule	Likely treatment	Comments
Track, Structures, and Signals			
213	Track safety standards	Comply (assuming light rail operator owns track or has been assigned responsibility for it).	If the conventional RR owns the track, light rail will have to observe speed limits for class of track.
233, 235, 236	Signal and train control	Comply (assuming light rail operator or its contractor has responsibility for signal maintenance).	If conventional RR maintains signals, light rail will have to abide by operational limitations and report signal failures.
234	Grade crossing signals	Comply (assuming light rail operator or its contractor has responsibility for crossing devices).	If conventional RR maintains devices, light rail will have to comply with sections concerning crossing accidents, activation failures, and false activations.
213, Appendix C	Bridge safety policy	Not a rule. Compliance voluntary.	
Motive Power and Equipment			
210	Noise emission	Waive	State safety oversight.
215	Freight car safety standards	Waive	State safety oversight.
221	Rear end marking devices	Waive	State safety oversight.
223	Safety glazing standards	Waive	State safety oversight.
229	Locomotive safety standards	Waive, except for arrangement of auxiliary lights, which is important for grade crossing safety.	State safety oversight.
231*	Safety appliance standards	Waive	State safety oversight; see note below on statutory requirements.
238	Passenger equipment standards	Waive	State safety oversight.
Operating Practices			
214	Bridge worker	Waive	OSHA standards.
214	Roadway worker safety	Comply	
217	Operating rules	Waive	State safety oversight.
218	Operating practices	Waive, except for prohibition on tampering with safety devices related to signal system, and blue signal rules on shared track.	State safety oversight.
219	Alcohol and drug	Waive if FTA rule otherwise applies	FTA rule may apply.
220	Radio communications	Waive, except to extent communications with freight trains and roadway workers are necessary.	State safety oversight.
225	Accident reporting and investigation	Comply with regard to train accidents and crossing accidents; waive as to injuries; FRA accident investigation authority not subject to waiver.	Employee injuries would be reported under FTA or OSHA rules.
228**	Hours of service recordkeeping	Waive (in concert with waiver of statute); waiver not likely for personnel who dispatch conventional RR or maintain signal system on shared use track.	See note below on possible waiver of statutory requirements.
239	Passenger train emergency preparedness.	Waive	State safety oversight.
240	Engineer certification	Waive	State safety oversight.

* *Safety Appliance Statute.* Certain safety appliance requirements (*e.g.*, automatic couplers) are statutory and can only be waived under the conditions set forth in 49 U.S.C. 20306, which permits exemptions if application of the requirements would ''preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations.'' If consistent with employee safety, FRA could probably rely on this provision to address most light rail equipment that could not meet the standards.

** *Hours of Service Statute.* Currently, 49 U.S.C. 21108 permits FRA to waive substantive provisions of the hours of service laws based upon a joint petition by the railroad and affected labor organizations, after notice and an opportunity for a hearing. This is a ''pilot project'' provision, so waivers are limited to two years but may be extended for additional two-year periods after notice and an opportunity for comment.

Issued in Washington, DC on June 30, 2000.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 00–17208 Filed 7–5–00; 10:43 am]

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Federal Register

Monday,
July 10, 2000

Part VIII

Department of Commerce

Bureau of the Census

Bureau of Export Administration

15 CFR Parts 30, 732, et al.

Foreign Trade Statistics Regulations; Shipper's Export Declaration or Filing Export Information Electronically Using Automated Export System; Clarification; Final Rule

Export Administration Regulations; Parties to Transaction and Their Responsibilities, Routed Export Transactions, Shipper's Export Declarations, and Export Clearance; Final Rule

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 980716180–0030–03]

RIN 0607–AA20

Foreign Trade Statistics Regulations: Amendment to Clarify Exporter (U.S. Principal Party in Interest) and Forwarding or Other Agent Responsibilities in Preparing the Shipper's Export Declaration or Filing Export Information Electronically Using the Automated Export System and Related Provisions

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census (Census Bureau) is amending the Foreign Trade Statistics Regulations (FTSR) to clarify the responsibilities of exporters and forwarding or other agents in completing the Shipper's Export Declaration (SED), or filing the information electronically using the Automated Export System (AES), and to clarify provisions for authorizing forwarding or other agents to prepare and file a paper SED or file the export information electronically using the AES on behalf of a principal party in interest. This rule also clarifies provisions on electronic transmissions of intangible transfers of software and technology; updates provisions related to mail shipments and certain related SED exemptions; notifies the public that in the near future the Census Bureau will revise appropriate ''exporter'' fields on the paper SED forms and the AES record to read ''U.S. principal party in interest,'' and require the reporting of the U.S. principal party in interest Employer Identification Number (EIN) or other identification number on the SED or AES record; clarifies what information should be listed in these newly revised blocks and the equivalent fields on the AES record; and clarifies provisions for providing import verification information to the Census Bureau.

DATES: *Effective Date:* This rule is effective July 10, 2000.

Grace Period: A 90 day grace period will apply to the requirements set forth in this rule. Until October 10, 2000, Shipper's Export Declarations will be accepted with information that complies with the rules prior to July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, DC 20233–6700, by telephone on (301) 457–2255, or by fax on (301) 457–2645.

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau is responsible for collecting, compiling, and publishing trade statistics for the United States. These data are used by various Federal Government agencies and the private sector for planning and policy development. In order to accomplish its mission, the Census Bureau must receive accurate statistical information from the trade community. The Shipper's Export Declaration (SED) and the Automated Export System (AES) records are the primary vehicles used for collecting such trade data, and the information contained therein is used by the Census Bureau for statistical purposes only and is confidential under the provisions of Title 13, United States Code (U.S.C.), Section 301(g). The Census Bureau's primary objective in this rule is to ensure the accuracy of its trade statistics and to clarify reporting responsibilities for all parties involved in export transactions.

As such, the Census Bureau is amending the Foreign Trade Statistics Regulations (FTSR), 15 Code of Federal Regulations (CFR) Part 30, to clarify responsibilities of exporters and forwarding or other agents in completing the SED, to notify the public that in the near future the Census Bureau will revise the title of the ''exporter'' blocks on the paper SED forms and the ''Exporter'' field on the AES record from reading ''Exporter'' to read ''U.S. principal party in interest,'' and to clarify in this rule what information should be listed in these newly revised blocks and the equivalent fields on the AES record. This rule defines new terms, including ''U.S. principal party in interest'' and ''routed export transaction,'' and clarifies existing ones (notably the definition of ''exporter'') for purposes of completing the SED or AES record. The rule clarifies provisions for authorizing a forwarding or other agent to prepare and file an SED or the AES record on behalf of a principal party in interest.

The Census Bureau initially published a notice of proposed rulemaking on this subject in the **Federal Register** on August 6, 1998 (63 FR 41979). As a result of comments received on that proposed rulemaking and subsequent discussions with the Bureau of Export Administration (BXA), the Census Bureau decided to issue a supplementary notice of proposed rulemaking to address the issues raised during the comment period and to further clarify provisions contained in that notice of proposed rulemaking. The Census Bureau published a supplementary notice of proposed rulemaking in the **Federal Register** on October 4, 1999 (64 FR 53861). The BXA also published a notice of proposed rulemaking in the **Federal Register** on October 4, 1999 (64 FR 53854) revising the Export Administration Regulations (EAR) regarding the responsibilities of the parties to an export transaction, routed export transactions, SEDs, and export clearance. Subsequent to the publication of those notices in the **Federal Register**, the Census Bureau and BXA participated in numerous meetings, conferences, and seminars with the trade community to explain more clearly the provisions of the proposed rules and to resolve questions and concerns of the trade community. BXA is also revising appropriate sections of the EAR in a final rule published elsewhere in this issue of the **Federal Register**. The EAR will conform to the provisions of the FTSR in reference to clarifying the responsibilities of exporters and forwarding or other agents in completing the SED, and BXA also will issue changes to the EAR to simplify export clearance.

In addition to issuing final rules on the provisions addressed in the proposed rulemakings, the Census Bureau and BXA also are issuing final rules in these notices to amend provisions regarding the reporting of value of exports in export transactions, exports of mail shipments via the U.S. Postal Service, amending certain provisions for miscellaneous exemptions and exports transhipped through Canada to a third destination, provisions regarding the electronic transmission of software and technology and other intangible transfers, and provisions for providing import information to the Census Bureau.

The Census Bureau is amending the FTSR to specify that electronic transmissions to be received outside the United States and other intangible transfers, such as downloaded software and technology, are not subject to the FTSR, but may be subject to export control requirements under other laws and regulations. The Census Bureau is further amending the FTSR to clarify making corrections to SEDs submitted to the U.S. Postal Service and to increase the value limitation for mail shipments that do not require an SED or AES record from $500 or under to $2,500 or under. The Census Bureau is also amending the FTSR to clarify certain

miscellaneous exemption provisions and provisions for exports transshipped through Canada to be consistent with the EAR and to include a provision requiring importers to provide certain import information to the Census Bureau to verify the accuracy of import data.

Response to Comments

The Census Bureau received 18 comments on the supplementary notice of proposed rulemaking published in the **Federal Register** on October 4, 1999 (64 FR 53861). A general response was sent to each respondent addressing their concerns with a notation that a more detailed response to the comments would be contained in the final rule. The Census Bureau revised certain provisions in the final rule to address the concerns of the respondents and to more clearly explain our requirements. The major concerns addressed in the comments and the Census Bureau's response are as follows:

1. *Specify that the information required on the SED or AES record is for statistical purposes.* There is concern among commentors that the Census Bureau did not clearly specify that the information reported on the SED or AES record is for statistical purposes. The Census Bureau is specifying in the regulation text of this rule, in § 30.4(a), that the information reported on the SED or AES record is used by the Census Bureau for statistical purposes only. The provisions contained in this part apply only to statistical reporting requirements. However, it must be understood that the SED or AES record is a dual purpose document/format used by the Census Bureau for statistical purposes and by the BXA and other government agencies for export control purposes.

2. *Specify and clarify the documentation and documentation sharing responsibilities of the forwarding or other agents in a routed export transaction.* There is some concern and confusion among commentors that the Census Bureau did not clearly specify the documentation and documentation sharing responsibilities of forwarding or other agents, especially in a routed export transaction. The Census Bureau is specifying, in the regulation text of this rule in § 30.4(b)(c), the reporting and documentation responsibilities of all parties involved in export and routed export transactions. The Census Bureau is further specifying, in the regulation text of this rule in § 30.4(c)(2), the documentation sharing responsibilities of the forwarding or other agent in a routed export transaction. In a routed export transaction the forwarding or other agent, upon request by the exporter (U.S. principal party in interest), is responsible for providing the exporter (U.S. principal party in interest) with documentation verifying that the information provided by the exporter (U.S. principal party in interest) was accurately reported on the SED or AES record. The Census Bureau will not dictate the format by which this documentation should be made available between the parties. The new regulation does not impose any additional documentation requirements on any party. The documentation provisions stated in the regulation are provisions currently specified in § 30.11 of this Part.

3. *Clarify the liability concerns of the Exporter (U.S. principal party in interest) in a routed transaction.* There is concern among commentors regarding the liability of the exporter (U.S. principal party in interest) especially in a routed export transaction, when the foreign principal party in interest (foreign buyer) authorizes a U.S. forwarding or other agent to act on its behalf in facilitating the export transaction and prepare and file the SED or AES record. The new regulations clearly address the liability concerns of all parties in an export and routed export transaction and provide more protection to the exporter (U.S. principal party in interest) than they have under the current regulations. The new regulations, for the first time, clearly specify in writing, in the regulation text itself, the specific reporting and documentation responsibilities of the exporter (principal party in interest) in § 30.4(c)(1) and the forwarding or other agent in § 30.4(c)(2) in a routed export transaction. Specifically, in a routed export transaction, the exporter (U.S. principal party in interest) is only responsible for providing basic commodity information and their Internal Revenue Service (IRS), Employer Identification Number (EIN) to the forwarding or other agent. The forwarding or other agent is responsible for obtaining a power of attorney or written authorization from the foreign principal party in interest and preparing, signing, and filing the SED or AES record based on the information obtained from the exporter (U.S. principal party in interest) and other parties to the transaction. The exporter (U.S. principal party in interest) is only responsible and liable for the information it is required to provide the forwarding or other agent in § 30.4(c)(2) of the FTSR.

4. *Add a second block/field to the SED or AES record for the manufacturer/seller or other responsible party.* There was a request from some commentors for the Census Bureau to add another block to the paper SED and another field to the AES record for the manufacturer/seller or other related party to the transaction. This addition would essentially duplicate information the Census Bureau currently collects and would increase the reporting burden on the public. For statistical reporting purposes the Census Bureau is only interested in capturing data on the entity that either sold or made available the goods for export abroad. That person is considered the exporter (U.S. principal party in interest), or for statistical reporting purposes on the SED or AES record, the U.S. principal party in interest. In addition, the Census Bureau believes that the public comments requesting the addition of another block on the SED were based upon the misconception that the party listed in the ''Exporter'' block of the SED or AES record was the person liable for the export under the EAR and the FTSR. The fact of the matter is that all parties that participate in an export transaction are liable for their own actions or inactions, whether they are listed on the export forms or not. In the near future, a revision to the title of the exporter blocks on the paper SED and equivalent fields of the AES record will be revised from reading ''Exporter'' to read ''U.S. principal party in interest,'' and ''Exporter's EIN (IRS) No.'' to read ''U.S. principal party in interest's EIN (IRS) No.'' Both BXA and the Census Bureau have the same definition for ''principal party in interest,'' therefore this revision will alleviate the confusion over the ''Exporter'' block of the SED or AES record.

5. *Exporter's concern on providing their Internal Revenue Service Employer Identification Number (EIN) to the forwarding or other agent in a routed transaction.* There is some concern among commentors about providing their EIN to a U.S. forwarding or other agent especially in a routed transaction. The requirement for reporting the exporter's EIN has been part of export regulatory requirements since 1980. The Census Bureau uses the EIN to identify the specific company exporting merchandise from the United States. Company names are usually varied and the Census Bureau needs a more definitive identifier for this purpose. The appropriate fields on the SED and AES record will be revised to require the reporting of the U.S. principal party in interest's EIN or other ID number. In

addition, a company's EIN is reported on numerous business and financial documents to verify the identity of a specific business entity. The EIN on the SED or AES record is kept strictly confidential and is not released to any other party. Section 30.91 of the FTSR specifically prohibits the disclosure of information on the SED or AES record to anyone except the exporter or his agent by those having possession of or access to any copy for official purposes. The forwarding or other agent is not permitted to release copies of the SED or AES record to any other party for unofficial purposes.

6. *Clarify provisions on preparing SEDs for consolidated or containerized shipments.* There is some concern among commentors on the implication the new regulations will have on consolidated or containerized shipments. The current regulations require the consolidator or forwarding or other agent to prepare a separate SED or AES record for each shipment in the container, i.e., all merchandise being sent from one exporter to one consignee, to a single country of destination, on a single carrier, on the same day. Under the new regulation, the consolidator or forwarding or other agent cannot be listed as exporter on the SED or AES record, but will need a separate SED or AES record by individual exporter (U.S. principal party in interest) for each shipment in the container.

7. *Clarify conformity of documents provisions.* There is also some concern among commentors about the conformity of documentation requirements for export documents. The only conformity of documents requirement is contained in § 758.4(b) of the EAR and states that when a license is issued by BXA, the information entered on related export control documents (*e.g.*, the SED, bill of lading or air waybill) must be consistent with the license. Complying with the conformity of documents requirement in the EAR would have been a problem with the term ''Exporter'' in the exporter blocks on the paper SED and on the equivalent field of the AES record, but with the pending revision of the paper SED and AES record to revise the title of this block/field to ''U.S. principal party in Interest,'' this will no longer be a concern.

Program Requirements

The Census Bureau is amending Title 15, Code of Federal Regulations (CFR), Part 30, to address the issues raised by commentors to the supplementary notice of proposed rulemaking to: (A) Define the term ''exporter,'' for purposes of completing the SED or AES record, as the U.S. principal party in interest in the export transaction; (B) Clarify the reporting responsibilities of the U.S. principal party in interest and the forwarding or other agent in completing the SED or AES record; (C) Clarify provisions for authorizing a forwarding or other agent to prepare and file an SED or file the information electronically using the AES; and (D) Clarify the documentation and compliance responsibilities of parties involved in the export transaction. For purposes of this rule, all references to preparing and filing the paper SED also pertain to preparing and filing the AES electronic record.

This rule clarifies the responsibilities of the exporter (U.S. principal party in interest) and the forwarding or other agent in preparing the SED or AES record. For export shipments, the Census Bureau recognizes ''routed export transactions'' as a subset of ''export transactions.'' A routed export transaction is where the foreign principal party in interest authorizes a U.S. forwarding or other agent to facilitate export of items from the United States.

The ''exporter'' and ''EIN'' fields on the SED and AES records are being revised to read U.S. principal party in interest.'' For purposes of completing the SED or AES record, use the definition found in section 30.4(a)(1) of the FTSR for ''Exporter (principal party in interest)'' to determine who should be listed in the new ''U.S. principal party in interest'' block/field of the SED or AES record. The FTSR defines the term exporter (U.S. principal party in interest) as the person in the United States that receives the primary benefit, monetary or otherwise, of the export transaction. Generally, that person is the U.S. seller, manufacturer, order party, or foreign entity. The foreign entity must be listed as the U.S. principal party in interest on the SED or AES record, if it is *in the United States* when the items are purchased or obtained for export. The foreign entity must then follow the provisions for preparing and filing the SED or AES record specified in §§ 30.4 and 30.7 of the FTSR, pertaining to the U.S. principal party in interest. In most cases, the forwarding or other agent is not a principal party in interest.

Keep in mind, however, that the EAR defines the exporter as the person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States (see EAR 15 CFR Part 772). In some transactions, this definition permits the forwarding or other agent to apply for a license and be the exporter, as defined in the EAR.

The person who signs the SED must be in the United States at the time of signing. If a U.S. manufacturer sells merchandise directly to a foreign principal party in interest for export, the U.S. manufacturer must be listed as the U.S. principal party in interest on the SED or AES record. If a U.S. manufacturer sells merchandise, as a domestic sale, to a U.S. buyer (wholesaler/distributor) and that U.S. buyer sells the merchandise to a foreign principal for export, the U.S. buyer (wholesaler/distributor) must be listed as the U.S. principal party in interest on the SED or AES record. If a U.S. order party, as defined in § 30.4(a)(1)(iii) of this rule, arranges for the sale and export of merchandise to a foreign principal party in interest directly, the U.S. order party must be listed as the U.S. principal party in interest on the SED or AES record. When a foreign entity is *in the United States* when the items are purchased or obtained for export it is the exporter (U.S. principal party in interest) and must be listed as the U.S. principal party in interest on the SED or AES record. The foreign entity must then follow the provisions for preparing and filing the SED or AES record specified in §§ 30.4 and 30.7 pertaining to the U.S. principal party in interest.

The forwarding or other agent is that person in the United States who is authorized by a principal party in interest to perform the services required to facilitate the export of items from the United States. The forwarding or other agent must be authorized by the exporter (U.S. principal party in interest), or in the case of a routed export transaction, the foreign principal party in interest. In a routed export transaction, the forwarding or other agent may be the exporter for compliance purposes under the EAR. However, the forwarding or other agent is never the ''U.S. principal party in interest'' on the paper SED or in the ''U.S. principal party in interest'' field of the AES record, except when the forwarding or other agent acts as an ''order party.''

The exporter (U.S. principal party in interest) can prepare and file the SED or AES record, or it can authorize a forwarding or other agent to prepare and file the SED or AES record on its behalf. If the exporter (U.S. principal party in interest) authorizes a forwarding or other agent to complete the SED or AES record on its behalf, the exporter (U.S. principal party in interest) is responsible for: (A) Providing the forwarding or other agent with the information necessary to complete the SED or AES record; (B) Providing the

forwarding or other agent with authorization to complete the SED or AES record, in the form of a power of attorney or written authorization, or signing the authorization block printed on the paper SED (block 23 on Commerce Form 7525–V or block 29 on Commerce Form 7525–V–ALT); and (C) Maintaining documentation to support the information provided to the forwarding or other agent for completing the SED or AES record.

The forwarding or other agent, if authorized by a principal party in interest, is responsible for: (A) Preparing the SED or AES record, based on information received from the exporter (U.S. principal party in interest) or other parties in the transaction; (B) Maintaining documentation to support the information reported on the SED or AES record; and (C) Upon request, providing the exporter (U.S. principal party in interest) with a copy of the export information filed in the form of a completed SED, an electronic facsimile, or in any other manner prescribed by the exporter (U.S. principal party in interest).

In a routed export transaction, where a foreign principal party in interest designates a U.S. forwarding or other agent to act on its behalf to prepare and file the SED or AES record, the exporter (U.S. principal party in interest) must provide the forwarding or other agent with the following information to assist them in preparing the SED or AES record: (1) Name and address of the U.S. principal party in interest; (2) U.S. principal party in interest's IRS, EIN; (3) Point of origin (State or Foreign Trade Zone (FTZ)); (4) Schedule B description of commodities; (5) Domestic (D), foreign (F), or Foreign Military Sale (FMS) (M) code; (6) Schedule B Number; (7) Quantity/unit of measure; (8) Value; (9) Upon request by the foreign principal party in interest or its agent, the Export Control Classification Number (ECCN) or with sufficient technical information to determine the ECCN; and (10) Any information that it knows will affect the determination of license authority.

Note: For Items 9 and 10, where the foreign principal party in interest has assumed responsibility for determining and obtaining license authority, the EAR sets forth the information sharing requirements that apply at 15 CFR 758.3(c) of the EAR.

In a routed export transaction, the forwarding or other agent is responsible for preparing, signing, and filing the SED or AES record based on information received from the exporter (U.S. principal party in interest) and other parties involved in the transaction. In addition to reporting the information provided by the exporter (U.S. principal party in interest) on the SED or AES record, the forwarding or other agent must provide the following export information on the SED or AES record: (1) Date of exportation; (2) Bill of lading/airway bill number; (3) Ultimate consignee; (4) Intermediate consignee; (5) Forwarding or other agent name and address; (6) Country of ultimate destination; (7) Loading pier; (8) Method of transportation; (9) Exporting carrier; (10) Port of export; (11) Port of unloading; (12) Containerized; (13) Weight; (14) ECCN; (15) License Authority; and (16) Signature in the certification block on the paper SED (block 24 on Commerce Form 7525–V and block 36 on Commerce Form 7525–V–ALT). In a routed export transaction, the exporter (U.S. principal party in interest) must be listed as the U.S. principal party in interest on the SED or the AES record.

Note: For items 14 and 15 where the foreign principal party in interest has assumed responsibility for determining and obtaining license authority, the EAR sets forth the information sharing requirements that apply at 15 CFR 758.3(c) of the EAR.

In a routed export transaction, the forwarding or other agent is responsible for: (A) Obtaining a power of attorney or written authorization from the foreign principal party in interest to act on its behalf; (B) Preparing, signing, and filing the SED or AES record based on information received from the exporter (U.S. principal party in interest) and other parties involved in the transaction; (C) Maintaining documentation to support the information reported on the SED or AES record, and (D) Upon request, providing the exporter (U.S. principal party in interest), with appropriate documentation verifying that the information provided by the exporter (U.S. principal party in interest) in interest was accurately reported on the SED or AES record.

The FTSR places primary responsibility for compliance of the SED and AES requirements on the exporter (U.S. principal party in interest) in an export transaction and on the forwarding or other agent in a routed export transaction. However, the FTSR also considers all parties involved in the transaction responsible for the truth, accuracy, and completeness of the information reported on the SED or AES record. The parties to the transaction must provide the forwarding or other agent with the information necessary to correctly prepare the paper SED or to file the data electronically using the AES. As always, documentation must be maintained by all parties involved in the transaction to support the information reported on the SED or the AES record.

All parties that participate in transactions subject to the FTSR are responsible for compliance with the FTSR. In all cases where a violation of the FTSR occurs, the documentation of all parties involved in the transaction must be made available to the proper enforcement officials to determine the liability and responsibility for the export violation pursuant to FTSR § 30.11. Acting through a forwarding or other agent or delegating or redelegating authority does not in and of itself relieve anyone of their compliance responsibility.

This notice further clarifies provisions for using a power of attorney or written authorization when a principal party in interest authorizes a forwarding or other agent to prepare and file the SED on its behalf and when the SED information is filed electronically using the AES. Suggested formats for a power of attorney and a written authorization for executing a SED are available upon request from the U.S. Census Bureau, Foreign Trade Division.

This rule further specifies in § 30.4(f) the requirement that the SED be prepared in English. This provision is already included in the Census Bureau's instructions for completing the SED and this rule will simply include that requirement in the CFR.

In addition, this amendment clarifies the provision in § 30.7(d)(2) that a foreign entity, if in the United States when the items are purchased or obtained for export, must be listed as the U.S. principal party in interest on the SED or AES record and follow the provisions as specified in this part pertaining to the U.S. principal party in interest. In such situations, when the foreign entity does not have an EIN or Social Security Number (SSN), a border crossing number, passport number, or any number assigned by U.S. Customs is required to be reported on the SED or the AES record. On the paper SED, the appropriate number should be preceded by the symbol ''T.'' On the AES record, the appropriate AES identifier code, as specified in the Automated Export System Trade Interface Requirements (AESTIR) must be reported. Using another's EIN or SSN is prohibited.

In addition to addressing the issues contained in the supplementary notice of proposed rulemaking (addressed above), this rule is also amending the FTSR to: (A) Include provisions on electronic transmission of software and technology; (B) Amend the provision for reporting value in an export transaction; (C) Include revisions to provisions

concerning mail shipments and certain related SED miscellaneous exemptions; (D) Clarify provisions for exports of items subject to the EAR that are transhipped through Canada to a third destination; and (E) Clarify provisions for providing import verification information to the Census Bureau. The specific revisions to the FTSR to include these changes are detailed in this rule.

In order to clarify the provisions of the FTSR with regards to the export reporting requirements for electronic transmissions and intangible transfers of software and technology, the Census Bureau is including a new section, 30.1(d), to the FTSR to state that electronic transmissions to be received outside the United States and other intangible transfers, such as downloaded software, and technology, are not subject to the provisions of the FTSR, but may be subject to export control requirements under other laws and regulations. Such transmissions and transfers are outside the scope and control of the Census Bureau and the FTSR. The FTSR only covers shipments of tangible/physical merchandise.

The Census Bureau is amending § 30.7(q), Value, to clarify the provision for reporting value information on the SED or AES record in an export transaction. In all export transactions the selling price or value to be reported on the SED or AES record is the U.S. principal party in interest's price to the foreign principal party in interest.

In order to update the Census Bureau's provisions on mail shipments currently included in the FTSR, the Census Bureau is clarifying provisions contained in § 30.16 for submitting corrections to SEDs that were initially submitted through the U.S. Postal Service. The Census Bureau is directing that all corrections to SEDs filed through the U.S. Postal Service be sent directly to the Census Bureau's National Processing Center in Jeffersonville, Indiana. The Census Bureau is also increasing the value limitation for goods exported through the mail that do not require a SED or AES record from $500 or under to $2,500 or under. This will bring all mail exports under the same provisions as for all other exports. Therefore, the Census Bureau will remove and reserve § 30.54, Special exemptions for mail shipments, as it is no longer necessary.

The Census Bureau is amending § 30.55, Miscellaneous exemptions, by revising paragraphs (g) and (h), and by adding paragraphs (n) and (o). Paragraphs (g) and (h) are being revised to make the FTSR language consistent with EAR revisions. Paragraph (n) will state that a SED or AES record is not required for exports of software and technology that does not require an export license, except that a SED or AES record is required for mass market software. For purposes of the FTSR, mass market software is defined as software that is generally available to the public by being sold from stock at retail selling points or directly from the software developer or supplier, by means of over the counter transactions, mail order transactions, telephone transactions, or electronic mail order transactions, and designed for installation by the user without further substantial technical support by the developer or supplier. Paragraph (o) will state that a SED or AES record is not required for any intangible exports of software and technology, such as downloaded software and technical data, including technology and software that requires an export license and mass market software exported electronically.

This rule is amending § 30.58 to revise the phrase ''validated export license'' to read ''license'' in paragraph (c)(1) and by adding paragraph (c)(6) for exports of items subject to the EAR that will be transhipped through Canada to a third country.

This rule also will include a provision to § 30.70, Statistical information required on import entries, to require importers to provide certain import information to the Census Bureau to verify the accuracy of import data. This is being included to ensure the cooperation of the importer in responding to requests from the Census Bureau when resolving problems or errors on import documents.

The revisions contained in this final rule are consistent with the provisions contained in the final rule issued by the BXA in its revisions to the EAR regarding the export control responsibilities of exporters and forwarding or other agents. The Department of the Treasury concurs with the provisions contained in this final rule.

Changes to the Proposed Rule

In order to comply with comments received from the trade community, and to update the FTSR to clarify all of the items discussed above, minor revisions were made to the proposed rule. These revisions are not substantial and reflect changes required to clarify the concerns of commentors to the supplementary notice of proposed rulemaking and to make minor updates to the FTSR to reflect changes the Census Bureau and the BXA are making to harmonize the FTSR and the EAR. The changes to the proposed rule are as follows:

(1) Section 30.1 is amended by adding paragraph (d) to clarify that electronic transmissions and other intangible transfers of software and technology are not subject to the provisions of the FTSR.

(2) Section 30.4(a) is amended by including clarifying language to specify that the information reported on the SED or AES record is used by the Census Bureau for statistical reporting purposes only and that for purposes of this part the provisions apply only to statistical reporting requirements.

(3) Section 30.4(a)(1) is amended by including clarifying language to specify that the person listed in the previously designated ''exporter'' block of the paper SED or in the ''exporter'' field on the AES record must be the U.S. principal party in interest; and adding paragraph (iv) to clarify provisions for when a foreign entity must be listed as U.S. principal party in interest on the SED or AES record.

(4) Section 30.4(a)(1)(iii) is amended by adding the definition for order party in the regulation text and removing order party as a footnote.

(5) Section 30.4(b)(1) *Designating a forwarding or other agent* in export transactions is removed and the provisions included in the *Exporter (U.S. principal party in interest) responsibilities* in export transactions, which is now designated Section 30.4(b)(1).

(6) Section 30.4(b)(3) is now designated Section 30.4(b)(2) *Forwarding or other agent responsibilities*.

(7) Section 30.4(c)(1) *Designating a forwarding or other agent* in routed export transactions is removed and the provisions included in the *Forwarding agent responsibilities* in routed export transactions, that is now designated Section 30.4(c)(2). Section 30.4(c)(2) *Exporter (U.S. principal party in interest) responsibilities* in routed export transactions is now designated section 30.4(1). Section 30.4(c)(3) *Forwarding agent responsibilities* in routed export transactions is now designated Section 30.4(c)(2).

(8) Section 30.4(c)(1) is amended by adding clarifying language to specify the documentation requirements of the exporter (U.S. principal party in interest) in a routed export transaction and to reference the current documentation provisions as specified in § 30.11.

(9) Section 30.4(c)(2) is amended by clarifying the responsibilities of the forwarding or other agent in a routed export transaction, and by adding specific language, in the regulation text, to clarify the documentation and

documentation sharing responsibilities of the forwarding or other agent in a routed export transaction, as referenced in § 30.11. In a routed export transaction, upon request of the exporter (U.S. principal party in interest), the forwarding or other agent must provide the exporter (U.S. principal party in interest) with documentation verifying that the information provided by the exporter (U.S. principal party in interest) was accurately reported on the SED or AES record.

(10) Section 30.7(d)(1) and (2) is amended by clarifying that for purposes of completing the SED or AES record, the exporter (U.S. principal party in interest) must be listed as the ''U.S. principal party in interest,'' that the U.S. principal party in interest's EIN or other identification number be reported on the SED or AES record, and clarifying reporting responsibilities of a foreign entity who is in the United States when conducting an export transaction, and not possessing an EIN or SSN. In such situations, the foreign entity is required to report a border crossing number, a passport number, or any other number assigned by U.S. Customs on the SED or AES record in lieu of the EIN or SSN.

(11) Section 30.7(q) Value, is amended by clarifying the provision for reporting value information in an export transaction. In all export transactions the selling price or value to be reported on the SED or AES record is the U.S. principal party in interest's price to the foreign principal party in interest.

(12) Section 30.16 is amended by revising provisions for submitting corrections to SEDs for mail exports filed with the U.S. Postal Service. The Census Bureau will require that, in the case of mail exports, exporters submit corrections to SEDs directly to the Census Bureau's National Processing Center in Jeffersonville, Indiana. Current regulations require that corrections be submitted through the Postmaster at the post office where the export was mailed.

(13) Section 30.54, Special exemptions for mail shipments, is removed and reserved from this part. This section is no longer necessary since the Census Bureau is raising the value limitation for when a SED or AES record is not required from $500 or under to $2,500 or under. This change in the value requirement for mail exports, brings mail exports under the same provisions as for all other exports and no further special exemptions are required.

(14) Section 30.55(g) is amended by updating and clarifying language to reflect the Bureau of Export Administration's, Export Administration Regulations for License Exception GFT for single gift parcels.

(15) Section 30.55(h) is amended by making the FTSR language consistent with EAR provisions.

(16) Section 30.55 is further amended by adding paragraphs (n) and (o). Paragraph (n) will state that a SED or AES record is not required for exports of technology and software that does not require a license, except that a SED or AES record is required for mass market software. For purposes of the FTSR, mass market software is defined as software that is generally available to the public by being sold from stock at retail selling points or directly from the software developer or supplier, by means of over the counter transactions, mail order transactions, telephone transactions, or electronic mail order transactions, and designed for installation by the user without further substantial technical support by the developer or supplier. Paragraph (o) will state that a SED or AES record is not required for any intangible exports of software and technology, such as downloaded software and technical data, including technology and software that requires an export license and intangible mass market software exported electronically.

(17) Section 30.58 is amended by revising the phrase ''validated export license'' to read ''license'' in paragraph (c)(1) and by adding paragraph (c)(6) to include provisions for the export of items subject to the EAR that will be transshipped through Canada to a third destination.

(18) Section 30.70 is amended by adding provisions to require importers to provide certain import information to the Census Bureau to verify the accuracy of import data.

Rulemaking Requirements

This rule is exempt from all requirements of Section 553 of the Administrative Procedure Act because it deals with a foreign affairs function (5 U.S.C.), 553(a)(1)).

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603(a)).

Executive Orders

This rule has been determined to be significant for purposes of Executive Order (E.O.) 12866. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, this rule's collections of information are cleared by the OMB under OMB Control Number 0607–0152. This rule will not impact the current reporting-hour burden requirements as approved under that OMB Control Number. We will furnish report forms to organizations included in the survey, and additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 15 CFR Part 30 is amended as follows:

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., 1004); Department of Commerce Organization Order No. 35–2A, August 4, 1975, 40 CFR 42765.

Subpart A—General Requirements—Exporters

2.–3. Section 30.1 is amended by adding paragraph (d) to read as follows:

§ 30.1 General statement of requirement for Shipper's Export Declarations.

* * * * *

(d) *Electronic transmissions and intangible transfers.* Electronic transmissions to be received outside the United States and other intangible transfers, such as downloaded software, technical data, and technology, are not subject to this part, but may be subject to export control requirements under other laws and regulations. See 15 CFR parts 730 through 774 of the EAR.

4. Section 30.4 is revised to read as follows:

§ 30.4 Preparation and signature of Shipper's Export Declaration (SED).

(a) *General requirements (SED).* For purposes of this part, all references to

preparing and filing the paper SED also pertain to preparing and filing the AES electronic record. The SED or AES record is a dual purpose document used by the Census Bureau for statistical reporting purposes only, and by the Bureau of Export Administration (BXA) and other government agencies for export control purposes. For purposes of this part, the provisions apply only to statistical reporting requirements. The Shipper's Export Declaration (SED) or the AES record must be prepared and signed by a principal party in interest or by a forwarding or other agent authorized by a principal party in interest. The person who signs the SED must be in the United States at the time of signing. That person, whether exporter (U.S. principal party in interest) or agent, is responsible for the truth, accuracy, and completeness of the SED or AES record, except insofar as that person can demonstrate that he or she reasonably relied on information furnished by others. The Census Bureau recognizes ''routed export transactions'' as a subset of export transactions. A routed export transaction is where the foreign principal party in interest authorizes a U.S. forwarding or other agent to facilitate export of items from the United States. See paragraph (c) of this section for responsibilities of parties in a routed export transaction.

(1) *Exporter (U.S. principal party in interest).* For purposes of completing the paper SED or AES record in all export transactions, the exporter (U.S. principal party in interest) is listed as the ''U.S. principal party in interest'' on the SED or AES record. In all export transactions, the person listed in the U.S. principal party in interest block on the paper SED or in the U.S. principal party in interest field of the AES record is the exporter (U.S. principal party in interest) in the transaction. The U.S. principal party in interest is the person in the United States that receives the primary benefit, monetary or otherwise, of the transaction. Generally that person is the U.S. seller, manufacturer, order party, or foreign entity. The foreign entity must be listed as the U.S. principal party in interest on the SED or AES record, if it is *in the United States* when the items are purchased or obtained for export. The foreign entity must then follow the provisions for preparing and filing the SED or AES record specified in §§ 30.4 and 30.7 pertaining to the U.S. principal party in interest. In most cases, the forwarding or other agent is not a principal party in interest.

(i) If a U.S. manufacturer sells merchandise directly for export to a foreign principal party in interest, the U.S. manufacturer must be listed as the U.S. principal party in interest on the SED or AES record.

(ii) If a U.S. manufacturer sells merchandise, as a domestic sale, to a U.S. buyer (wholesaler/distributor) and that U.S. buyer sells the merchandise for export to a foreign principal party in interest, the U.S. buyer (wholesaler/distributor) must be listed as the U.S. principal party in interest on the SED or AES record.

(iii) If a U.S. order party directly arranges for the sale and export of merchandise to a foreign buyer, the U.S. order party must be listed as the U.S. principal party in interest on the SED or AES record. The order party is that person in the United States who conducted the direct negotiations or correspondence with the foreign principal party in interest and who, as a result of these negotiations, received the order from the foreign principal party in interest.

(iv) If a foreign entity is *in the United States* when the items are purchased or obtained for export, it is the exporter (U.S. principal party in interest) and must be listed as the U.S. principal party in interest on the SED or AES record (see § 30.4(a)(1)).

Note to paragraph (a)(1): The EAR defines the ''exporter'' as the person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States (see 15 CFR Part 772 of the EAR). For statistical purposes the Foreign Trade Statistics Regulations (FTSR) have a different definition of ''exporter'' from the Export Administration Regulations (EAR). Under the FTSR the ''exporter'' will always be the U.S. principal party in interest. For purposes of licensing responsibility under the EAR, the U.S. agent of the foreign principal party in interest may be the ''exporter'' or applicant on the license, in certain routed export transactions (see 15 CFR 758.3 of the EAR).

(2) *Forwarding or other agent.* The forwarding or other agent is that person in the United States who is authorized by a principal party in interest to perform the services required to facilitate the export of items from the United States. The forwarding or other agent must be authorized by the exporter (U.S. principal party in interest) or, in the case of a routed export transaction, the foreign principal party in interest to prepare and file the SED or the AES record. In a routed export transaction, the forwarding or other agent can be the exporter for export control purposes under the EAR. However, the forwarding or other agent is never the ''U.S. principal party in interest'' in the U.S. principal party in interest block on the paper SED or in the ''U.S. principal party in interest'' field of the AES record unless the forwarding or other agent acts as an ''order party.'' (See paragraph (a)(1)(iii) for definition of order party)

(3) *Principal parties in interest.* Those persons in a transaction that receive the primary benefit, monetary or otherwise, of the transaction. Generally, the principals in a transaction are the seller and the buyer. In most cases, a forwarding or other agent is not a principal party in interest.

(b) *Responsibilities of parties in export transactions.* (1) *Exporter (U.S. principal party in interest) responsibilities.* (i) The exporter (U.S. principal party in interest) can prepare and file the SED or AES record itself, or it can authorize a forwarding or other agent to prepare and file the SED or AES record on its behalf. If the exporter (U.S. principal party in interest) prepares the SED or AES record itself, the exporter (U.S. principal party in interest) is responsible for the accuracy of all the export information reported on the SED or AES record, for signing the paper SED, filing the paper SED with U.S. Customs, or transmitting the AES record to U.S. Customs.

(ii) When the exporter (U.S. principal party in interest) authorizes a forwarding or other agent to complete the SED or AES record on its behalf, the exporter (U.S. principal party in interest) is responsible for:

(A) Providing the forwarding or other agent with the export information necessary to complete the SED or AES record;

(B) Providing the forwarding or other agent with a power of attorney or written authorization to complete the SED or AES record, or signing the authorization block printed on the paper SED (block 23 on Commerce Form 7525–V and block 29 on Commerce Form 7525–V-ALT); and

(C) Maintaining documentation to support the information provided to the forwarding or other agent for completion of the SED or AES record, as specified in § 30.11.

(2) *Forwarding or other agent responsibilities.* The forwarding or other agent, when authorized by an exporter (U.S. principal party in interest) to prepare and sign the SED or prepare and file the AES record in an export transaction, is responsible for:

(i) Accurately preparing the SED or AES record based on information received from the exporter (U.S. principal party in interest) and other parties involved in the transaction;

(ii) Obtaining a power of attorney or written authorization to complete the SED or AES record, or obtaining a paper SED with a signed authorization from

the exporter (U.S. principal party in interest);

(iii) Maintaining documentation to support the information reported on the SED or AES record, as specified in § 30.11; and

(iv) Upon request, providing the exporter (U.S. principal party in interest) with a copy of the export information filed in the form of a completed SED, an electronic facsimile, or in any other manner prescribed by the exporter (U.S. principal party in interest).

(c) *Responsibilities of parties in a routed export transaction.* (1) *Exporter (U.S. principal party in interest) responsibilities.* In a routed export transaction where the foreign principal party in interest authorizes a U.S. forwarding or other agent to prepare and file the SED or AES record, the exporter (U.S. principal party in interest) must maintain documentation to support the information provided to the forwarding or other agent for preparing the SED or AES record as specified in § 30.11 and provide such forwarding or other agent with the following information to assist in preparing the SED or AES record:

(i) Name and address of the U.S. principal party in interest;

(ii) U.S. principal party in interest's, IRS, EIN;

(iii) Point of origin (State or FTZ);

(iv) Schedule B description of commodities;

(v) Domestic (D), foreign (F), or FMS (M) code;

(vi) Schedule B Number;

(vii) Quantity/unit of measure;

(viii) Value;

(ix) Upon request from the foreign principal party in interest or its agent, the Export Control Classification Number (ECCN) or sufficient technical information to determine the ECCN; and

(x) Any information that it knows will affect the determination of license authority.

Note to paragraph (c)(1): For items in paragraph (c)(1)(ix) and (x) of this section, where the foreign principal party in interest has assumed responsibility for determining and obtaining license authority, the EAR sets forth the information sharing requirements that apply at 15 CFR 758.3(c) of the EAR.

(2) *Forwarding or other agent responsibilities.* In a routed export transaction, the forwarding or other agent is responsible for; obtaining a power of attorney or written authorization from the foreign principal party in interest to prepare and file the SED or AES record on its behalf; preparing, signing, and filing the SED or AES record based on information obtained from the exporter (U.S. principal party in interest) or other parties involved in the transaction; maintaining documentation to support the information reported on the SED or AES record, and upon request by the exporter (U.S. principal party in interest), provide appropriate documentation to the exporter (U.S. principal party in interest) verifying that the information provided by the exporter (U.S. principal party in interest) was accurately reported on the SED or AES record. The forwarding or other agent must also provide the following export information on the SED or AES record:

(i) Date of exportation;

(ii) Bill of lading/airway bill number;

(iii) Ultimate consignee;

(iv) Intermediate consignee;

(v) Forwarding or other agent name and address;

(vi) Country of ultimate destination;

(vii) Loading pier;

(viii) Method of transportation;

(ix) Exporting carrier;

(x) Port of export;

(xi) Port of unloading;

(xii) Containerized;

(xiii) Weight;

(xiv) ECCN;

(xv) License Authority;

(xvi) Signature in the certification block on the paper SED (block 24 on Commerce Form 7525–V and block 36 on Commerce Form 7525–V–ALT). In a routed export transaction the exporter (U.S. principal party in interest) must be listed as U.S. principal party in interest on the SED or on the AES record;

Note to paragraph (c)(2): For items in paragraph (c)(2)(xiv) and (xv) of this section, where the foreign principal party in interest has assumed responsibility for determining and obtaining license authority, the EAR sets forth the information sharing requirements that apply at 15 CFR 758.3(c) of the EAR.

(d) *Information on the Shipper's Export Declaration (SED) or Automated Export System (AES) record.* The data provided on the SED or AES electronic record shall be complete, correct, and based on personal knowledge of the facts stated or on information furnished by the parties involved in the export transaction. All parties involved in export transactions, including U.S. forwarding or other agents, should be aware that invoices and other commercial documents may not necessarily contain all the information needed to prepare the SED or AES record. The parties must ensure that all the information needed for completing the SED or AES record, including correct export licensing information, is provided to the forwarding or other agent for the purpose of correctly preparing the SED or AES record as stated in this section.

(e) *Authorizing a Forwarding or other agent.* In a power of attorney or other written authorization, authority is conferred upon an agent to perform certain specified acts or kinds of acts on behalf of a principal (see 15 CFR 758.1(h) of the EAR). In cases where a forwarding or other agent is filing export information on the SED or AES record, the forwarding or other agent must obtain a power of attorney or written authorization from a principal party in interest to file the information on its behalf. A power of attorney or written authorization should specify the responsibilities of the parties with particularity, and should state that the forwarding or other agent has authority to act on behalf of a principal party in interest as its true and lawful agent for purposes of the export transaction in accordance with the laws and regulations of the United States.

(f) *Format requirements for SEDs:* The SED shall be prepared in English and shall be typewritten or prepared in ink or other permanent medium (except indelible pencil). The use of duplicating processes, as well as the overprinting of selected items of information, is acceptable.

(g) *Copies of SEDs:* All copies of the SEDs must contain all of the information called for in the signature space as to name of firm, address, name of signer, and capacity of signer. The original SED must be signed in ink, but signature on other copies is not required. The use of signature stamps is acceptable. A signed legible carbon or other copy of the export declaration is acceptable as an ''original'' of the SED.

5. Section 30.7 is amended by revising paragraphs (d), (e) and (q)(1) to read as follows:

§ 30.7 Information required on Shipper's Export Declarations.

* * * * *

(d) *Name of the U.S. principal party in interest and U.S. principal party in interest's Employer Identification Number (EIN).* For purposes of completing the paper SED or AES record the exporter (U.S. principal party in interest) is the U.S. principal party in interest. The name and address (number, street, city, state, ZIP Code) of the U.S. principal party in interest and the U.S. principal party in interest's EIN shall be entered where requested on the SED or AES electronic record. The EIN shall be the U.S. principal party in interest's own and not another's EIN.

(1) *Name of the U.S. principal party in interest.* In all export transactions, the person listed in the U.S. principal party in interest block on the SED or in the U.S. principal party in interest field on

the AES record must be the exporter (U.S. principal party in interest) in the transaction. The U.S. principal party in interest is the person in the United States that receives the primary benefit, monetary or otherwise, of the export transaction. Generally that person is the U.S. seller, manufacturer, order party, or foreign entity, if in the United States when the items are purchased or obtained for export. The foreign entity must then follow the provisions for preparing and filing the SED or AES record specified in §§ 30.4 and 30.7 pertaining to the U.S. principal party in interest. (See § 30.4 for details on the specific reporting responsibilities of exporter (U.S. principal party in interest)).

(2) *U.S. principal party in interest's Employer Identification Number (EIN).* An exporter (U.S. principal party in interest) shall report its own Internal Revenue Service (IRS) EIN in the U.S. principal party in interest's (IRS) EIN block/field on the SED. If, and only if, no IRS EIN has been assigned to the exporter (U.S. principal party in interest), the exporter's (U.S. principal party in interest) own SSN, preceded by the symbol ''SS,'' must be reported on the paper SED. On the AES record the appropriate SSN symbol must be reported. When a foreign entity is in the United States when the items are purchased or obtained for export it is the exporter (U.S. principal party in interest). In such situations, when the foreign entity does not have an EIN or SSN, a border crossing number, passport number, or any number assigned by U.S. Customs must be reported on the SED or the AES record. On the paper SED, the appropriate number should be preceded by the symbol ''T.'' On the AES record, the appropriate AES identifier code as specified in the Automated Export System Trade Interface Requirements (AESTIR) must be reported. Use of another's EIN or SSN is prohibited.

(e) *Forwarding or other agent.* The name and address of the duly authorized forwarding or other agent (if any) of a principal party in interest must be recorded where required on the SED or AES record. (See § 30.4 for details on the specific reporting responsibilities of forwarding or other agents).

* * * * *

(q) *Value.* (1) In general, the value to be reported on the Shipper's Export Declaration or AES record shall be the value at the U.S. port of export (selling price or cost if not sold, including inland freight, insurance, and other charges to U.S. port of export) (nearest whole dollar; omit cents figures). The ''Selling price'' for goods exported pursuant to sale, and the value to be reported on the SED or AES record, is the exporter's (U.S. principal party in interest) price to the foreign principal party in interest, net any unconditional discounts from list price, but without deducting any discounts which are conditional upon a particular act or performance on the part of the customer. Commissions to be paid by an exporter (U.S. principal party in interest) to his agent abroad, or to be deducted from the selling price by the agent abroad should be excluded. For goods shipped on consignment without a sale actually having been made at the time of export, the ''selling price'' to be reported on the SED or AES record is the market value at the time of export at the United States port from which exported.

* * * * *

6. Section 30.16 is amended by revising the first sentence to read as follows:

§ 30.16 Corrections to Shipper's Export Declarations.

The Exporter (U.S. principal party in interest) (or its agent) must report corrections, cancellations, or amendments to information reported on Shipper's Export Declarations to the Customs Director at the port of exportation (or, in the case of mail shipments directly to the U.S. Census Bureau, National Processing Center, Attention: Foreign Trade Section, 1201 East 10th Street, Jeffersonville, Indiana 47132) as soon as the need to make such correction, cancellation, or amendment is determined. * * *

Subpart D—Exemptions from the Requirements for the Filing of Shipper's Export Declarations

§ 30.54 [Removed and reserved]

7. Section 30.54 is removed and reserved.

8. Section 30.55 is amended by revising paragraphs (g) and (h), adding paragraphs (n) and (o), and removing the authority citation at the end of the section, to read as follows:

§ 30.55 Miscellaneous exemptions.

* * * * *

(g) Shipments of single gift parcels as authorized by the Bureau of Export Administration under License Exception GFT, see 15 CFR 740.12 of the EAR.

(h) Except as noted in paragraph (h)(2) of this section exports of commodities where the value of the commodities, shipped from one exporter to one consignee on a single exporting carrier, classified under an individual Schedule B number, is $2,500 or less.

(1) This exemption applies to individual Schedule B commodity numbers regardless of the total shipment value. In instances where a shipment contains a mixture of individual Schedule B commodity numbers valued $2,500 or less and individual Schedule B commodity numbers valued over $2,500, only those commodity numbers valued $2,500 or more need be reported on a Shipper's Export Declaration or AES record.

(2) This exemption does not apply to exports:

(i) Destined for Cuba, Iran, Iraq, Libya, North Korea, Serbia (excluding Kosovo), Sudan and Syria.

(ii) Requiring a Department of Commerce license (15 CFR Parts 730 through 774 of the EAR).

(iii) Requiring a Department of State, Office of Defense Trade Controls export license under the International Traffic In Arms Regulations (ITAR) (22 CFR Parts 120 through 130).

(iv) Subject to the ITAR but exempt from license requirements.

(v) Requiring a Department of Justice, Drug Enforcement Administration export permit (21 CFR Part 1312). This exemption shall be conditioned upon the filing of such reports as the Bureau of the Census shall periodically require to compile statistics on $2,500 and under shipments.

* * * * *

(n) Exports of technology and software as defined in 15 CFR Part 772 of the EAR that do not require an export license, except that an SED or AES record is required for mass market software. For purposes of the FTSR, mass market software is defined as software that is generally available to the public by being sold at retail selling points, or directly from the software developer or supplier, by means of over the counter transactions, mail order transactions, telephone transactions, or electronic mail order transactions, and designed for installation by the user without further substantial technical support by the developer or supplier.

(o) Intangible exports of software and technology, such as downloaded software and technical data, including technology and software that requires an export license and mass market software exported electronically.

9. Section 30.58 is amended by revising the phrase ''validated export license'' to read ''license'' in paragraph (c)(1), and by adding paragraph (c)(6) to read as follows:

§ 30.58 Exemption for shipments from the United States to Canada.

* * * * *

(c) * * *

(6) For all exports of items subject to the EAR (15 CFR Parts 730 through 799) that will be transhipped through Canada to a third destination, that would require an SED, AES record, or Commerce license if shipped directly to the final destination from the United States (see § 30.55(h)(2), including exports of items subject to the EAR that will be transhipped through Canada to Cuba, Iran, Iraq, Libya, North Korea, Serbia (excluding Kosovo), Sudan, and Syria.

Subpart F—General Requirements—Importers

10. Section 30.70 is amended by redesignating footnote 9 as footnote 7 and adding a sentence before the last sentence of the introductory text to read as follows:

§ 30.70 Statistical information required on import entries.

* * * Upon request, the importer or import broker must provide the Census Bureau with information or documentation necessary to verify the accuracy or resolve problems regarding the reported import transaction received by the Census Bureau.* * *

* * * * *

Dated: June 29, 2000.

Kenneth Prewitt,

Director, U.S. Census Bureau.

[FR Doc. 00–16895 Filed 7–6–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 732, 740, 743, 748, 750, 752, 758, 762, 772, and 774

[Docket No. 990709186–0128–02]

RIN 0694–AB88

Parties to a Transaction and Their Responsibilities, Routed Export Transactions, Shipper's Export Declarations, the Automated Export System (AES), and Export Clearance

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is revising the Export Administration Regulations (EAR) to clarify the responsibilities of parties to export and reexport transactions, the filing and use of Shipper's Export Declarations, Destination Control Statement requirements, and other export clearance issues. In addition, this rule adds information about the scope and requirements for the Automated Export System (AES) Option 4 provision.

DATES: *Effective Date:* This rule is effective July 10, 2000.

Grace Period: A 90 day grace period will apply to the requirements set forth in this rule. Until October 10, 2000, Shipper's Export Declarations will be accepted with information that complies with the rules prior to July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, at (202) 482–2440.

For additional information on the AES in general, please contact: C. Harvey Monk, Chief Foreign Trade Division, U.S. Census Bureau, (301) 457–2255, fax (301) 457–2645, e-mail: c.harvey.monk.jr@census.gov

For information about obtaining BXA approval to use AES Option 4 for items subject to the EAR, contact: Tom Andrukonis or Donald Lyles, Director, Office of Enforcement Analysis, Bureau of Export Administration, (202) 482–4255, fax (202) 482–0971, e-mail: tandruko@bxa.doc.gov

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) in order to simplify and clarify the export clearance process and facilitate compliance. The amendment promotes flexibility so that parties to transactions subject to the EAR may structure their transactions freely, consistent with national security and foreign policy objectives.

In this final rule, BXA defines new terms, including ''principal parties in interest'', ''routed export transaction'', and ''end-user'', and clarifies existing ones (notably the definition of ''exporter''). The amendments ensure that for every transaction subject to the EAR, some party to the transaction is clearly responsible for determining licensing authority (License, License Exception, or NLR), and for obtaining the appropriate license or other authorization. The amendments also encourage communication among all parties to a transaction to ensure that each party knows its responsibilities in order to comply with the EAR.

For export control purposes the exporter has generally been the seller. An export transaction, however, has two principal parties in interest: a U.S. party and a foreign party—usually the seller and the buyer. In a ''routed export transaction,'' the foreign principal party in interest agrees to terms of sale that may include assuming responsibility for export licensing. This rule provides that when the foreign principal party expressly assumes responsibility in writing for determining license requirements and obtaining necessary authorization, that foreign party must have a U.S. agent who becomes the ''exporter'' for export control purposes. Without such a written undertaking by the foreign principal, the U.S. principal is the exporter, with all attendant responsibilities.

In addition to clarifying export licensing responsibilities, this rule institutes a requirement that the export licensee communicate license conditions to those parties to whom conditions apply and, when required by the license, obtain written acknowledgment of receipt of the conditions. This new provision is part of BXA's License and Enforcement Action Program (LEAP), which is designed to enhance compliance with the EAR.

In addition, these amendments significantly revise the first six sections of Part 758 of the EAR by reorganizing, streamlining and clarifying necessary provisions while deleting unnecessary or redundant provisions. Section 758.1 consolidates into one section the export control-related provisions pertaining to the SED or AES record. In consolidating these provisions into one section, BXA has eliminated those that are already contained in the FTSR, or that were otherwise unrelated to export controls. Section 758.2 provides new rules for BXA's AES Option 4 approval process. Commenters asked that this be added to the final regulation. Section 758.3 clarifies and consolidates provisions relating to the responsibilities of the parties, and § 758.4 consolidates, but does not significantly change, provisions concerning the use of an export license. Section 758.4, which contained very specific provisions relating to conformity of documents, has been greatly simplified in the interest of flexibility, and moved to section 758.5. Former sections 758.5 (general destination control requirements) and § 758.6 (destination control statement) have been combined and reduced to one paragraph at § 758.6.

Lastly, section 762.7 is amended to add language that clarifies that BXA has legal authority to issue subpoenas requiring individuals to appear and testify during the investigatory phase of an export case. The authority for this is found in both the Export Administration

Act of 1979 in section 12(a)(1), and in the International Emergency Economic Powers Act in section 1702(a)(2).

The Census Bureau initially published a notice of proposed rulemaking as to who goes in block 1(a) of the SED in the **Federal Register** on August 6, 1998 (63 FR 41979). As a result of comments received on that proposed rulemaking and subsequent discussions with the Bureau of Export Administration (BXA), the Census Bureau decided to issue a supplementary notice of proposed rulemaking to address the issues raised during the comment period and to further clarify provisions contained in that notice of proposed rulemaking. The Census Bureau published a supplementary notice of proposed rulemaking in the **Federal Register** on October 4, 1999 (64 FR 53861). BXA also published a notice of proposed rulemaking in the **Federal Register** on October 4, 1999 (64 FR 53854) revising the Export Administration Regulations (EAR) regarding the responsibilities of the parties to an export transaction, routed export transactions, Shipper's Export Declarations, and export clearance. Before and after the publication of those notices in the **Federal Register**, both the Census Bureau and BXA participated in numerous meetings, conferences, and seminars with the trade community to gain an understanding of business issues, and to more clearly explain the provisions of the proposed rules.

Response to Comments

BXA received twenty-eight (28) comments on the notice of proposed rulemaking published in the **Federal Register** on October 4, 1999 (64 FR 53861). BXA revised certain provisions in the final rule to address the concerns of the respondents and to more clearly explain the requirements. The major concerns addressed in the comments and BXA's response are as follows:

1. *Requirement to put the Export Control Classification Number (ECCN) on the SED or AES record whenever exporting an item that is listed on the Commerce Control List.* Commenters expressed concern this requirement would be very burdensome. These commenters explained the greater administrative burden in terms of having to report ECCNs subject only to Anti-terrorism (AT) controls even when the ultimate destination is a non-terrorism supporting country. BXA also received comments supporting the proposed ECCN requirement, because of the vital importance of the ECCN both to Government agencies such as the U.S. Customs Service, and to the business community as a foundation for making correct license determinations. In fact, one company suggested that BXA expand the requirement to include requiring the ECCN on the invoice and bill of lading in order to provide information to the foreign principal for reexport purposes. In response to the comments, BXA narrowed the scope of the ECCN requirement in the final rule so that exporters only have to report the ECCN on the SED or AES record for items exported under a license or License Exception, and ''No License Required'' (NLR) shipments of items having a reason for control other than anti-terrorism (AT). The only exception to this requirement would be for items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3) of the EAR.

2. *Clarify the writing required from the foreign principal party in interest in routed transactions to permit its agent to become the ''exporter.''* Some commenters wanted clarification as to what the writing should include. Others wanted to know if the Incoterm ''EXW'' would be sufficient for the writing. One commenter expressed support for an express writing, as opposed to Incoterms, because of the lack of understanding of the Incoterms among small and medium size exporters, who typically hire clerks to comply with export regulations. In response to these concerns, BXA has included in this preamble an example of an acceptable writing. This example is similar to the language that describes the buyer's responsibiltiy for export licenses in the Incoterms 2000 publication. BXA's sample writing would be signed by the foreign principal party in interest, and reads, ''I undertake to determine any export license requirements, to obtain any export license or other official authorization, and to carry out any customs formalities for the export of the goods.'' This is just an example of a writing. No doubt the exporting community will use good judgement in determining the extensiveness of the writing it chooses to use, by considering the strategic applications and capabilities of the item being exported, its level of relationship with the foreign principal party in interest, and the foreign principal's knowledge of U.S. export laws. The format or language is not the most important part of the writing requirement. The most important aspect of the writing is that it reflects an agreement between the principals concerning their specific roles in determining the license requirements and obtaining any license that is required.

Some specific questions were submitted by some commenters about the writing.

1. *Question:* May one writing cover multiple transactions between the same principals?

Answer: Yes, and this has been clarified in this final rule.

2. *Question:* In a routed transaction that is supported by an assumption of responsibility in writing, must the U.S. principal party in interest also obtain a writing from the U.S. agent of the foreign principal party in interest stating that the agent has assumed export compliance responsibilities on behalf of the foreign principal party in interest?

Answer: While the EAR do not require the U.S. principal party in interest to obtain a writing from the agent to establish its export compliance role, it would be a good business practice to confirm the agent's responsibilities.

3. *The liability of the U.S. principal party in interest when complying with the information sharing requirement.* Several commenters were concerned about the liability that may accrue to the U.S. principal party in interest in a routed transaction when it gives the foreign principal party in interest or its agent the Export Control Classification Number (ECCN), technical specifications of an item, or other information related to license determination. This final rule does not change the current standards of liability as they apply to provision of information. The foreign principal party in interest or its authorized agent is responsible for ensuring that the export complies with all applicable requirements of the EAR, including, as necessary, the accuracy of the product classification. If the foreign principal party in interest has reason to doubt the accuracy of the ECCN provided, is unclear about the classification of the item based on the technical specifications provided or has questions about any other aspect of export control requirements, the foreign principal party in interest must make inquiries and take appropriate action to ensure compliance with the EAR.

Some companies expressed concern about requests for information that is readily available from other sources, proprietary, not in the possession of the U.S. principal party in interest, or not available. In addition to the availability concern, some companies were concerned about the cost of complying with information sharing requests. BXA has not made any changes in the final rule in this regard, as the U.S. principal is generally in a better position to obtain

the ECCN or technical specifications than the foreign principal or its agent. There is no requirement to go beyond the information necessary to classify the item according to the technical parameters of the CCL. BXA believes that all these concerns are better dealt with in the business environment among the principals, rather than by regulation.

4. *Requirement for the licensee to obtain written acknowledgment of license conditions, when it is required per condition on the license.* Some companies are concerned that BXA licensing officers will overuse this condition. Several individuals suggested a notification requirement instead of a notification and acknowledgment combination. The practice of including a condition for the licensee to notify a particular party or parties of the conditions on a license or in some case obtain an acknowledgment of this notification has been in use for many years by BXA. This rule simply adds the practice to the regulations, for transparency.

One individual expressed concern that it would be unclear as to what constitutes compliance if the licensee were required to notify all end-users of conditions in a situation where the ultimate consignee was a distributor. Applicants must remember that conditions may be negotiated between BXA and the applicant. Moreover, if an applicant receives a license, but is not comfortable with the conditions, the applicant may choose not to proceed with the transaction.

5. *Effective date of publication.* There is some industry concern about the effective date of these provisions, as it may take some time to reprogram automated processes, provide training to personnel, and create new compliance procedures within export management systems. BXA believes that a 90 day ''grace period'' will give adequate time to the exporting community to ensure compliance with the rules set forth in this regulation.

6. *Clarify conformity of documents provisions.* Several commenters stated their belief that BXA's new definition of ''exporter'', coupled with the Bureau of Census'' new requirement for the U.S. principal party in interest to be placed in block 1(a) of the SED or in the ''exporter'' block of the AES record, was confusing to some commenters. They expressed concern over the fact the ''exporter'' for EAR purposes may not be the person in the ''exporter'' block of the SED or AES record. Some commenters came to the conclusion that the different definitions of ''exporter'' might impact the conformity of documents requirement contained in § 758.5(b) of the EAR. To alleviate the confusion and the conformity of document conflict caused by BXA's and Census' different definitions of the term ''exporter,'' Census will be revising the SED and AES record to remove the term ''exporter'' from blocks 1a, 1b, and the AES record, and replacing it with the term ''U.S. Principal Party in Interest.''

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, extended by Presidential notice of August 10, 1999 (64 FR 44101) (August 13, 1999).

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. This rule involves collections that have been approved by the Office of Management and Budget under control numbers 0694–0038, and 0694–0096. This rule contains collections that have been approved by the Office of Management and Budget under control numbers: 0607–0152, 0694–0040, 0694–0094, 0694–0095, 0694–0097, 0694–0088, and 0694–0120. Notwithstanding any other provision of law, no person is required to respond nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 732

Administrative practice and procedure, Advisory committees, Exports, Foreign trade, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Parts 740, 743, 748, 750, 752, 758, and 772

Administrative practice and procedure, Exports, Foreign trade, Reporting and Recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade.

Accordingly, parts 732, 740, 743, 748, 750, 752, 758, 762, 772, and 774 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citation for 15 CFR parts 758 and 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

2. The authority citation for 15 CFR parts 732, 748, 752, and 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

3. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

4. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq;* 50 U.S.C. 1701 *et seq;* E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

5. The authority citation for 15 CFR part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12981, 60 FR 62980, 3 CFR, 1997 Comp., p. 60; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

6. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 3 CFR, 1999 Comp., p. 302.

7. Parts 740 through 772 are amended by revising the phrase ''U.S. exporter'' to read ''exporter'' in the following places:

a. § 740.9(a)(2)(iii) last sentence;
b. § 740.10(b)(3)(ii)(C);
c. § 743.1(b);
d. § 748.11(e)(4)(ii)(*1*);
e. Supplement No. 3 to part 748, ''BXA–711, Statement By ultimate consignee and Purchaser Instructions'', Block 8; and
f. Supplement No. 3 to part 752, ''Instructions on Completing Form BXA–752 'Statement by Consignee in Support of Special Comprehensive License'–A'', Block 5.

PART 732—[AMENDED]

8. Section 732.5 is revised to read as follows:

§ 732.5 Steps regarding Shipper's Export Declaration, Destination Control Statements, and recordkeeping.

(a) *Step 27: Shipper's Export Declaration (SED) or Automated Export System (AES) record.* Exporters or agents authorized to complete the Shipper's Export Declaration (SED), or to file SED information electronically using the Automated Export System (AES), should review § 758.1 of the EAR to determine when an SED is required and what export control information should be entered on the SED or AES record. More detailed information about how to complete an SED or file the SED information electronically using AES may be found in the Bureau of Census Foreign Trade Statistics Regulations (FTSR) at 15 CFR part 30. Reexporters and firms exporting from abroad may skip Steps 27 through 29 and proceed directly to § 732.6.

(1) *Entering license authority.* You must enter the correct license authority for your export on the SED or AES record (License number, License Exception symbol, or No License Required designator ''NLR'') as appropriate. See § 758.1(g) of the EAR and 15 CFR 30.7(m) of the FTSR.

(i) *License number and expiration date.* If you are exporting under the authority of a license, you must enter the license number on the SED or AES record. The expiration date must be entered on paper versions of the SED only.

(ii) *License Exception.* If you are exporting under the authority of a License Exception, you must enter the correct License Exception symbol (*e.g.,* LVS, GBS, CIV) on the SED or AES record. See § 740.1 and § 740.2 of the EAR.

(iii) *NLR.* If you are exporting items for which no license is required, you must enter the designator NLR. You should use the NLR designator in two circumstances: first, when the items to be exported are subject to the EAR but not listed on the Commerce Control List (CCL) (*i.e.,* items that are classified as EAR99), and second, when the items to be exported are listed on the CCL but do not require a license. Use of the NLR designator is also a representation that no license is required under any of the General Prohibitions set forth in part 736 of the EAR.

(2) *Item description.* You must enter an item description identical to the item description on the license when a license is required, or enter an item description sufficient in detail to permit review by the U.S. Government and verification of the Schedule B Number (or Harmonized Tariff Schedule number) for License Exception shipments or shipments for which No License is Required (NLR). See § 758.1(g) of the EAR; and 15 CFR 30.7(l) of the FTSR.

(3) *Entering the ECCN.* You must enter the correct Export Control Classification Number (ECCN) on the SED or AES record for all licensed and License Exception shipments, and ''No License Required'' (NLR) shipments of items having a reason for control other than anti-terrorism (AT). The only exception to this requirement would be the return of unwanted foreign origin items, meeting the provisions of License Exception TMP, under § 740.9(b)(3). See § 758.1(g) of the EAR.

(b) *Step 28: Destination Control Statement.* The Destination Control Statement (DCS) must be entered on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad. The person responsible for preparation of those documents is responsible for entry of the DCS. The DCS is required for all exports from the United States of items on the Commerce Control List and is not required for items classified as EAR99, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR). Reexporters should review § 752.15 of the EAR for DCS requirements when using a Special Comprehensive License; otherwise, DCS requirements do not apply to reexports. See § 758.6 of the EAR.

(c) *Step 29: Recordkeeping.* Records of transactions subject to the EAR must be maintained for five years in accordance with the recordkeeping provisions of part 762 of the EAR.

§ 732.6 [Amended]

9. Section 732.6 is amended by:

a. Revising the citation ''§ 758.2'' to read ''§ 758.4'' in paragraph (a); and

b. Revising the citation ''§ 758.4'' to read ''§ 758.1'' in paragraph (b).

PART 740—[AMENDED]

§ 740.1 [Amended]

10. Section 740.1 is amended by revising:

a. The phrase ''requirements of § 758.5 and § 758.6 of the EAR.'' in paragraph (e) to read ''requirements of § 758.6 of the EAR.''; and

b. Paragraph (d) to read as follows:

§ 740.1 Introduction.

* * * * *

(d) *Shipper's Export Declaration or Automated Export System (AES) record.* You must enter on any required Shipper's Export Declaration (SED) or Automated Export System (AES) record the correct License Exception symbol (*e.g.,* LVS, GBS, CIV) and the correct Export Control Classification Number (ECCN) (*e.g.,* 4A003, 5A002) for all shipments of items exported under a License Exception. Items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3), are excepted from this requirement. See § 758.1 of the EAR for Shipper's Export Declaration requirements or § 758.2 of the EAR for Automated Export System (AES) requirements.

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§ 740.7 [Amended]

11. Section 740.7 is amended by revising the citation ''758.6(a)(ii)'' to read ''758.6'' in paragraph (e)(2).

PART 748—[AMENDED]

12. Section 748.4 is amended by revising paragraphs (a) and (b) to read as follows:

§ 748.4 Basic guidance related to applying for a license.

(a) *License applicant.* (1) *Export transactions.* Only a person in the United States may apply for a license to export items from the United States. The applicant must be the exporter, who is the U.S. principal party in interest with the authority to determine and control the sending of items out of the United States, except for Encryption License Arrangements (ELA) (see § 750.7(d) of the EAR). See definition of ''exporter'' in part 772 of the EAR.

(2) *Routed export transactions.* The U.S. principal party in interest or the duly authorized U.S. agent of the foreign principal party in interest may apply for a license to export items from the United States. Prior to submitting an application, the agent that applies for a license on behalf of the foreign principal party in interest must obtain a power of attorney or other written authorization from the foreign principal party in interest. See § 758.3(b) and (d) of the EAR.

(3) *Reexport transactions.* The U.S. or foreign principal party in interest, or the duly authorized U.S. agent of the foreign principal party in interest, may apply for a license to reexport controlled items from one country to another. Prior to submitting an application, an agent that applies for a license on behalf of a foreign principal party in interest must obtain a power-of-attorney or other written authorization from the foreign principal party in interest, unless there is a preexisting relationship by ownership, control, position of responsibility or affiliation. See power-of-attorney requirements in paragraph (b)(2) of this section.

(b) *Disclosure of parties on license applications and the power of attorney.* (1) *Disclosure of parties.* License applicants must disclose the names and addresses of all parties to a transaction. When the applicant is the U.S. agent of the foreign principal party in interest, the applicant must disclose the fact of the agency relationship, and the name and address of the agent's principal. If there is any doubt about which persons should be named as parties to the transaction, the applicant should disclose the names of all such persons and the functions to be performed by each in Block 24 (Additional Information) of the BXA–748P Multipurpose Application form. Note that when the foreign principal party in interest is the ultimate consignee or end-user, the name and address need not be repeated in Block 24. See ''Parties to the transaction'' in § 748.5.

(2) *Power of attorney or other written authorization.* (i) *Requirement.* An agent must obtain a power of attorney or other written authorization from the principal party in interest, unless there is a preexisting relationship by ownership, control, position of responsibility or affiliation, prior to preparing or submitting an application for a license, when acting as either:

(A) An agent, applicant, licensee and exporter for a foreign principal party in interest in a routed transaction; or

(B) An agent who prepares an application for export on behalf of a U.S. principal party in interest who is the actual applicant, licensee and exporter in an export transaction.

(ii) *Application.* When completing the BXA–748P Multipurpose Application Form, Block 7 (documents on file with applicant) must be marked ''other'' and Block 24 (Additional information) must be marked ''748.4(b)(2)'' to indicate that the power of attorney or other written authorization is on file with the agent. See § 758.3(d) for power of attorney requirement, and see also part 762 of the EAR for recordkeeping requirements.

* * * * *

13. Section 748.5 is revised to read as follows:

§ 748.5 Parties to the transaction.

The following parties may be entered on the BXA–748P Multipurpose Application Form or electronic equivalent. The definitions, which also appear in part 772 of the EAR, are set out here for your convenience to assist you in filling out your application correctly.

(a) *Applicant.* The person who applies for an export or reexport license, and who has the authority of a principal party in interest to determine and control the export or reexport of items. See § 748.4(a) and definition of ''exporter'' in part 772 of the EAR.

(b) *Other party authorized to receive license.* The person authorized by the applicant to receive the license. If a person and address is listed in Block 15 of the BXA–748P Multipurpose Application Form or the electronic equivalent, the Bureau of Export Administration will send the license to that person instead of the applicant. Designation of another party to receive the license does not alter the responsibilities of the applicant, licensee or exporter.

(c) *Purchaser.* The person abroad who has entered into the transaction to purchase an item for delivery to the ultimate consignee. In most cases, the purchaser is not a bank, forwarding agent, or intermediary. The purchaser and ultimate consignee may be the same entity.

(d) *Intermediate consignee.* The person that acts as an agent for a principal party in interest and takes possession of the items for the purpose of effecting delivery of the items to the ultimate consignee. The intermediate consignee may be a bank, forwarding agent, or other person who acts as an agent for a principal party in interest.

(e) *Ultimate consignee.* The principal party in interest located abroad who receives the exported or reexported items. The ultimate consignee is not a forwarding agent or other intermediary, but may be the end-user.

(f) *End-user.* The person abroad that receives and ultimately uses the exported or reexported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.

PART 750—[AMENDED]

14. Section 750.7 is amended by revising paragraph (d) to read as follows:

§ 750.7 Issuance of licenses.

* * * * *

(d) *Responsibility of the licensee.* The person to whom a license is issued is the licensee. In export transactions, the exporter must be the licensee, and the exporter-licensee is responsible for the proper use of the license, and for all terms and conditions of the license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. In the case of Encryption License Agreements (ELA), the licensee may not necessarily be the exporter or reexporter. In this case, the authorized user of the ELA is responsible for proper use of the license, and for all terms and conditions of the license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. In reexport or routed export transactions, a U.S. agent acting on behalf of a foreign principal party in interest may be the licensee; in these cases, both the agent and the foreign principal party in interest, on whose behalf the agent has acted, are responsible for the use of the license, and for all terms and conditions of the

license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. It is the licensee's responsibility to communicate the specific license conditions to the parties to whom those conditions apply. In addition, when required by the license, the licensee is responsible for obtaining written acknowledgment(s) of receipt of the conditions from the party(ies) to whom those conditions apply.

* * * * *

PART 752—[AMENDED]

§ 752.15 [Amended]

15. Section 752.15 is amended by revising the citation ''§ 758.3'' to read ''§ 758.1'' in paragraph (a) introductory text.

PART 758—[AMENDED]

16. Part 758 is amended by revising sections 758.1 through 758.6, to read as follows:

PART 758—EXPORT CLEARANCE REQUIREMENTS

§ 758.1 The Shipper's Export Declaration (SED) or Automated Export System (AES) record.

(a) *The Shipper's Export Declaration (SED) or Automated Export System (AES) record.* The SED (Form 7525–V, Form 7525–V–Alt, or Automated Export System record) is used by the Bureau of Census to collect trade statistics and by the Bureau of Export Administration for export control purposes. The SED or AES record collects basic information such as the names and addresses of the parties to a transaction; the Export Control Classification Number (ECCN) (when required), the Schedule B number or Harmonized Tariff Schedule number, the description, quantity and value of the items exported; and the license authority for the export. The SED or the AES electronic equivalent is a statement to the United States Government that the transaction occurred as described.

(b) *When an SED or AES record is required.* Except when the export of items subject to the EAR is to take place electronically or in an otherwise intangible form, you must file an SED or AES record with the United States Government for items subject to the EAR, including exports by U.S. mail, in the following situations:

(1) For all exports of items subject to the EAR that are destined to Cuba, Iran, Iraq, Libya, North Korea, Serbia (except Kosovo), Sudan, or Syria, regardless of value (see 15 CFR 30.55(h) of the FTSR); and

(2) For all exports of items subject to the EAR that are authorized under a license, regardless of value, or destination;

(3) For all exports of commodities and mass market software subject to the EAR that are authorized under a License Exception or under NLR, when the value of the commodities or mass market software classified under a single Schedule B Number (or Harmonized Tariff Schedule number) is over $2,500, except as exempted by the Foreign Trade Statistics Regulations (FTSR) in 15 CFR part 30 and referenced in paragraph (c) of this section;

(4) For all exports of items subject to the EAR that will be transshipped through Canada to a third destination, where the export would require an SED or AES record or license if shipped directly to the final destination from the United States (see 15 CFR 30.58(c) of the FTSR).

Note to paragraph (b): In addition to the Shipper's Export Declaration for exports, the Bureau of Census Foreign Trade Statistics Regulations provide for a specific Shipper's Export Declaration for In-Transit Goods (Form 7513). See 15 CFR 30.3 and 30.8 of the FTSR.

(c) *Exemptions.* A complete list of exemptions from the SED or AES filing requirement is set forth in the FTSR. Some of these FTSR exemptions have elements in common with certain EAR License Exceptions. An FTSR exemption may be narrower than a License Exception. The following references are provided in order to direct you to the FTSR exemptions that relate to EAR License Exceptions:

(1) License Exception Baggage (BAG), as set forth in § 740.14 of the EAR. See 15 CFR 30.56 of the FTSR;

(2) License Exception Gift Parcels and Humanitarian Donations (GFT), as set forth in § 740.12 of the EAR. See 15 CFR 30.55(g) of the FTSR;

(3) License Exception Aircraft and Vessels (AVS), as set forth in § 740.15 of the EAR. See 15 CFR 30.55(l) of the FTSR;

(4) License Exception Governments and International Organizations (GOV), as set forth in § 740.11 of the EAR. See 15 CFR 30.53 of the FTSR;

(5) License Exception Technology and Software Under Restriction (TSR), as set forth in § 740.6 of the EAR. See 15 CFR 30.55(n) of the FTSR; or

(6) License Exception Temporary Imports, Exports, and Reexports (TMP) ''tools of trade'', as set forth in § 740.9(a)(2)(i) of the EAR. See 15 CFR 30.56(b) of the FTSR.

(d) *Notation on export documents for exports exempt from SED or AES record requirements.* When an exemption from filing the Shipper's Export Declaration or Automated Export System record applies, the export authority (License Exception or NLR) of all the items must be entered on the loading document (*e.g.,* Cargo Declaration, manifest, bill of lading, (master) air waybill) by the person responsible for preparing the document. This requirement is intended to parallel the Bureau of Census requirement, so that notations as to the basis for the SED *exemption* and the license authority are entered in the same place and manner (see 15 CFR 30.21 of the FTSR for detailed requirements). The loading document must be available for inspection by government officials, along with the items, prior to lading on the carrier.

(e) *Signing the Shipper's Export Declaration or transmitting data via AES.* The person who signs the SED must be in the United States at the time of signing. The person who transmits data via AES must be a certified AES participant in accordance with 15 CFR 30.60 of the FTSR. The person that signs the SED or transmits data via AES, whether exporter or agent, is responsible for the truth, accuracy, and completeness of the SED or AES record, except insofar as that person can demonstrate that he or she reasonably relied on information furnished by others.

(f) *The SED or AES record is an export control document.* The SED or AES record is a statement to the U.S. Government. The SED or AES record is an export control document as defined in part 772 of the EAR. False statements made thereon may be a violation of § 764.2(g) of the EAR. When an SED or AES record is presented to the U.S. Government, the signer or filer of the SED or AES record represents the following:

(1) Export of the items described on the SED or AES record is authorized under the terms and conditions of a license issued by BXA; is in accordance with the terms and conditions of a License Exception; is authorized under ''NLR'' as no license is required for the shipment; or is not subject to the EAR;

(2) Statements on the SED or AES record are in conformity with the contents of any license issued by BXA, with the possible exception of the exporter block in routed transactions; and

(3) All information shown on the SED or AES record is true, accurate, and complete.

(g) *Export control information on the SED or AES record.* For *each* item on the SED or AES record, you must show the license authority (License number, License Exception, or No License

Required (NLR)), the Export Control Classification Number (ECCN) (when required), and the item description in the designated blocks. The item description must be stated in Commerce Control List terms. If those terms are inadequate to meet Census Bureau requirements, the FTSR requires that you give enough additional detail to permit verification of the Schedule B Number (or Harmonized Tariff Schedule number). The FTSR also requires separate descriptions of items for each Schedule B classification (or Harmonized Tariff Schedule number). See 15 CFR 30.6 (separate SED or AES records), § 30.7(l) (description of items) and § 30.9 (separation of items on the SED) of the FTSR.

(1) *Exports under a license.* When exporting under the authority of a license, you must enter on the SED or AES record the license number and expiration date (the expiration date is only required on paper versions of the SED), the ECCN, and an item description identical to the item description on the license.

(2) *Exports under a License Exception.* You must enter on any required SED or AES record the ECCN and the correct License Exception symbol (*e.g.,* LVS, GBS, CIV) for the License Exception(s) under which you are exporting. Items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3), are excepted from this requirement. See also § 740.1(d) of the EAR.

(3) *No License Required (NLR) exports.* You must enter on any required SED or AES record the ''NLR'' designation when the items to be exported are subject to the EAR but not listed on the Commerce Control List (*i.e.,* items are classified as EAR99), and when the items to be exported are listed on the CCL but do not require a license. In addition, you must enter the correct ECCN on any required SED or AES record for all items being exported under the NLR provisions that have a reason for control other than anti-terrorism (AT). The designator ''TSPA'' may be used, but is not required, when the export consists of technology or software outside the scope of the EAR. See § 734.7 through § 734.11 of the EAR for TSPA information.

(h) *Power of attorney or other written authorization.* In a ''power of attorney'' or other written authorization, authority is conferred upon an agent to perform certain specified acts or kinds of acts on behalf of a principal.

(1) An agent must obtain a power of attorney or other written authorization in the following circumstances:

(i) An agent that represents a foreign principal party in interest in a routed transaction must obtain a power of attorney or other written authorization that sets forth his authority; and

(ii) An agent that applies for a license on behalf of a principal party in interest must obtain a power of attorney or other written authorization that sets forth the agent's authority to apply for the license on behalf of the principal.

Note to paragraph (h)(1): The Bureau of Census Foreign Trade Statistics Regulations impose additional requirements for a power of attorney or other written authorization. See 15 CFR 30.4(e) of the FTSR.

(2) This requirement for a power of attorney or other written authorization is a legal requirement aimed at ensuring that the parties to a transaction negotiate and understand their responsibilities. The absence of a power of attorney or other written authorization does not prevent BXA from using other evidence to establish the existence of an agency relationship for purposes of imposing liability.

(i) *Submission of the SED or AES record.* The SED or AES record must be submitted to the U.S. Government in the manner prescribed by the Bureau of Census Foreign Trade Statistics Regulations (15 CFR part 30).

§ 758.2 Automated Export System (AES).

The Census Bureau's Foreign Trade Statistics Regulations (FTSR) (15 CFR 30) contain provisions for filing Shipper's Export Declarations (SEDs) electronically using the Automated Export System (AES). In order to use AES, you must apply directly to the Census Bureau for certification and approval through a Letter of Intent (see 15 CFR 30.60(b) and Appendix A to part 30 of the FTSR). Four AES filing options are available for transmitting shipper's export data. Option 1 is the standard paper filing of the SED, while the other three options are electronic. Option 2 requires the electronic filing of all information required for export prior to export (15 CFR 30.61(a) and 30.63 of the FTSR); Option 3 requires the electronic filing of only specified data elements prior to export, with complete information transmitted within 5 working days of exportation (15 CFR 30.61(b) and Appendix B of the FTSR); Option 4 is only available for approved filers (approval by Census Bureau, U.S. Customs Service, BXA and other agencies) and requires no information to be transmitted prior to export, with complete information transmitted within 10 working days of exportation (15 CFR 30.61(c) and 30.62(c) of the FTSR).

(a) *Census' Option 4 application process.* Exporters, or agents applying on behalf of an exporter, may apply for Option 4 filing privileges by submitting a Letter of Intent to the Census Bureau in accordance with 15 CFR 30.60(b) and 30.62 of the FTSR. The Census Bureau will distribute the Letter of Intent to BXA and other agencies participating in the Option 4 approval process. Any agency may notify Census that an applicant has failed to meet its acceptance standards, and the Census Bureau will provide a denial letter to the applicant naming the denying agency. If no agency denies the application within 30 days, nor requests an extension of time within 30 days, the Census Bureau will provide the applicant with an approval letter. See 15 CFR 30.62(b) of the FTSR.

(b) *BXA Option 4 application process.* When AES filers wish to use Option 4 for exports of items that require a BXA license, those filers must seek separate approval directly from BXA by completing a questionnaire and certification. (Separate BXA approval is not required for the use of Option 4 in connection with exports that do not require a BXA license.) The questionnaire and certification should be mailed to: U.S. Department of Commerce, Bureau of Export Administration, The Office of Enforcement Analysis, 14th & Pennsylvania Avenue, N.W., Room 4065, Washington, D.C. 20230.

(1) *Questionnaire.* The following questions must be answered based on your experiences over the past five years. If the answer to either of the questions is ''yes'', it must be followed with a full explanation. Answering ''yes'' to either of the questions will not automatically prevent your participation in Option 4. BXA will consider the facts of each case and any remedial action you have taken to determine whether your reliability is sufficient to participate in this program.

(i) Have you been charged with, convicted of, or penalized for, any violation of the EAR or any statute described in § 766.25 of the EAR?

(ii) Have you been notified by any government official of competent authority that you are under investigation for any violation of the EAR or any statute described in § 766.25 of the EAR?

(2) *Certification.* Each applicant must submit a signed certification as set forth in this paragraph. The certification will be subject to verification by BXA.

I (We) certify that I (we) have established adequate internal procedures and safeguards to comply with the requirements set forth in the U.S. Department of Commerce Export

Administration Regulations (EAR) and Foreign Trade Statistics Regulations (FTSR). These procedures and safeguards include means for:

(i) Making a proper determination as to whether a license is required for a particular export;

(ii) Receipt of notification of approval of the export license, if required, before the export is made;

(iii) Compliance with all the terms and conditions of the license, License Exception, or NLR provisions of the EAR as applicable;

(iv) Return of revoked or suspended licenses to BXA in accordance with § 750.8(b) of the EAR, if requested;

(v) Compliance with the destination control statement provisions of § 758.6 of the EAR;

(vi) Compliance with the prohibition against export transactions that involve persons who have been denied U.S. export privileges; and

(vii) Compliance with the recordkeeping requirements of part 762 of the EAR.

I (we) agree that my (our) office records and physical space will be made available for inspection by the Bureau of the Census, BXA, or the U.S. Customs Service, upon request.

(c) *BXA Option 4 evaluation criteria.* BXA will consider the grounds for denial of Option 4 filing status set forth in 15 CFR 30.62(b)(2) of the FTSR, as well as the additional grounds for denial set forth in this paragraph.

(1) Applicants have not been approved for Option 4 filing privileges by the Census Bureau or other agency;

(2) Applicants are denied persons (*i.e.,* persons listed on the Denied Persons List in Supplement No. 2 to Part 764 of the EAR); or

(3) Exports are destined to the countries designated by the Secretary of State as supporters of international terrorism under Section 6(j) of the Export Administration Act of 1979, as amended. These ''T–7'' countries currently include Iran, Iraq, Libya, North Korea, Cuba, Sudan, and Syria.

(d) *Contacts for assistance.* (1) For additional information on the AES in general, please contact: Chief Foreign Trade Division, U.S. Census Bureau, (301) 457–2255, facsimile: (301) 457–2645.

(2) For information about BXA's Option 4 approval process to use AES Option 4 for items subject to the EAR, contact: Director, Office of Enforcement Analysis, Bureau of Export Administration, (202) 482–4255, facsimile: (202) 482–0971.

§ 758.3 Responsibilities of parties to the transaction.

All parties that participate in transactions subject to the EAR must comply with the EAR. Parties are free to structure transactions as they wish, and to delegate functions and tasks as they deem necessary, as long as the transaction complies with the EAR. However, acting through a forwarding or other agent, or delegating or redelegating authority, does not in and of itself relieve anyone of responsibility for compliance with the EAR.

(a) *Export transactions.* The U.S. principal party in interest is the exporter, except in certain routed transactions. The exporter must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization. The exporter may hire forwarding or other agents to perform various tasks, but doing so does not necessarily relieve the exporter of compliance responsibilities.

(b) *Routed export transactions.* All provisions of the EAR, including the end-use and end-user controls found in part 744 of the EAR, and the General Prohibitions found in part 736 of the EAR, apply to routed export transactions. The U.S. principal party in interest is the exporter and must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization, *unless* the U.S. principal party in interest obtains from the foreign principal party in interest a writing wherein the foreign principal party in interest expressly assumes responsibility for determining licensing requirements and obtaining license authority, making the U.S. agent of the foreign principal party in interest the exporter for EAR purposes. One writing may cover multiple transactions between the same principals. See § 748.4(a)(3) of the EAR.

Note to paragraph (b): For statistical purposes, the Foreign Trade Statistics Regulations (15 CFR part 30) have a different definition of ''exporter'' from the Export Administration Regulations. Under the FTSR the ''exporter'' will always be the U.S. principal party in interest. For purposes of licensing responsibility under the EAR, the U.S. agent of the foreign principal party in interest may be the ''exporter'' in a routed transaction.

(c) *Information sharing requirements.* In routed export transactions where the foreign principal party in interest assumes responsibility for determining and obtaining licensing authority, the U.S. principal party in interest must, upon request, provide the foreign principal party in interest and its forwarding or other agent with the correct Export Control Classification Number (ECCN), or with sufficient technical information to determine classification. In addition, the U.S. principal party in interest must provide the foreign principal party in interest or the foreign principal's agent any information that it knows will affect the determination of license authority, see § 758.1(g) of the EAR.

(d) *Power of attorney or other written authorization.* In routed export transactions, a forwarding or other agent that represents the foreign principal party in interest, or who applies for a license on behalf of the foreign principal party in interest, must obtain a power of attorney or other written authorization from the foreign principal party in interest to act on its behalf. See § 748.4(b)(2) and § 758.1(h) of the EAR.

§ 758.4 Use of export license.

(a) *License valid for shipment from any port.* An export license issued by BXA authorizes exports from any port of export in the United States unless the license states otherwise. Items that leave the United States at one port, cross adjacent foreign territory, and reenter the United States at another port before being exported to a foreign country, are treated as exports from the last U.S. port of export.

(b) *Shipments against expiring license.* Any item requiring a license that has not departed from the final U.S. port of export by midnight of the expiration date on an export license may not be exported under that license unless the shipment meets the requirements of paragraphs (b)(1) or (2) of this section.

(1) BXA grants an extension; or

(2) Prior to midnight on the date of expiration on the license, the items:

(i) Were laden aboard the vessel;

(ii) Were located on a pier ready for loading and not for storage, and were booked for a vessel that was at the pier ready for loading; or

(iii) The vessel was expected to be at the pier for loading before the license expired, but exceptional and unforseen circumstances delayed it, and BXA or the U.S. Customs Service makes a judgment that undue hardship would result if a license extension were required.

(c) *Reshipment of undelivered items.* If the consignee does not receive an export made under a license because the carrier failed to deliver it, the exporter may reship the same or an identical item, subject to the same limitations as to quantity and value as described on the license, to the same consignee and destination under the same license. If an item is to be reshipped to any person other than the original consignee, the shipment is considered a new export and requires a new license. Before reshipping, satisfactory evidence of the original export and of the delivery failure, together with a satisfactory explanation of the delivery failure, must be submitted by the exporter to the

following address: Operations Division, Bureau of Export Administration, U.S. Department of Commerce, Room 2705, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230.

§ 758.5 Conformity of documents and unloading of items.

(a) *Purpose.* The purpose of this section is to prevent items licensed for export from being diverted while in transit or thereafter. It also sets forth the duties of the parties when the items are unloaded in a country other than that of the ultimate consignee as stated on the export license.

(b) *Conformity of documents.* When a license is issued by BXA, the information entered on related export control documents (*e.g.,* the SED or AES record, bill of lading or air waybill) must be consistent with the license.

(c) *Issuance of the bill of lading or air waybill.* (1) *Ports in the country of the ultimate consignee.* No person may issue a bill of lading or air waybill that provides for delivery of licensed items to any foreign port located outside the country of the intermediate or the ultimate consignee named on the BXA license and Shipper's Export Declaration (SED) or AES electronic equivalent.

(2) *Optional ports of unloading.* (i) *Licensed items.* No person may issue a bill of lading or air waybill that provides for delivery of licensed items to optional ports of unloading unless all the optional ports are within the country of ultimate destination or are included on the BXA license and SED or AES electronic equivalent.

(ii) *Unlicensed items.* For shipments of items that do not require a license, the exporter may designate optional ports of unloading on the SED or AES electronic equivalent and other export control documents, so long as the optional ports are in countries to which the items could also have been exported without a license. See also 15 CFR 30.7(h) of the FTSR.

(d) *Delivery of items.* No person may deliver items to any country other than the country of the intermediate or ultimate consignee named on the BXA license and SED or AES record without prior written authorization from BXA, except for reasons beyond the control of the carrier (such as acts of God, perils of the sea, damage to the carrier, strikes, war, political disturbances or insurrection).

(e) *Procedures for unscheduled unloading.* (1) *Unloading in country where no license is required.* When items are unloaded in a country to which the items could be exported without a license issued by BXA, no notification to BXA is required. However, any persons disposing of the items must continue to comply with the terms and conditions of any License Exception, and with any other relevant provisions of the EAR.

(2) *Unloading in a country where a license is required.* (i) When items are unloaded in a country to which the items would require a BXA license, no person may effect delivery or entry of the items into the commerce of the country where unloaded without prior written approval from BXA. The carrier, in ensuring that the items do not enter the commerce of the country, may have to place the items in custody, or under bond or other guaranty. In addition, the carrier must inform the exporter and BXA of the unscheduled unloading in a time frame that will enable the exporter to submit its report within 10 days from the date of unscheduled unloading. The exporter must within 10 days of the unscheduled unloading report the facts to and request authorization for disposition from BXA using either: mail, fax, or E-mail. The report to BXA must include:

(A) A copy of the manifest of the diverted cargo;

(B) Identification of the place of unloading;

(C) Statement that explains why the unloading was necessary; and

(D) A proposal for disposition of the items and a request for authorization for such disposition from BXA.

(ii) *Contact information.* U.S. Department of Commerce, Bureau of Export Administration, Office of Exporter Services, Room 1093, 14th and Pennsylvania Avenue, NW, Washington, DC 20230; phone number 202–482–0436; facsimile number 202–482–3322; and E-Mail address: RPD@BXA.DOC.GOV.

§ 758.6 Destination control statement.

The Destination Control Statement (DCS) must be entered on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad. The person responsible for preparation of those documents is responsible for entry of the DCS. The DCS is required for all exports from the United States of items on the Commerce Control List that are not classified as EAR99, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR). At a minimum, the DCS must state: ''These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.''

PART 762—[AMENDED]

17. Section 762.2 is amended by:

a. Revising the citation ''§ 758.1(b)(3)'' to read ''§ 758.1(h)'' in paragraph (b)(29);

b. Revising paragraphs (b)(15), (b)(30), (b)(39), and (b)(40); and

c. Adding a new paragraph (b)(41) to read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(15) § 750.7, Issuance of license and acknowledgment of conditions;

* * * * *

(30) § 758.1 and § 758.2, Shipper's Export Declaration or Automated Export System record;

* * * * *

(39) § 745.1, Annual reports;

(40) § 745.2, End-use certificates; and

(41) § 758.2(c), Assumption writing.

§ 762.7 [Amended]

18. Section 762.7 is amended by revising the phrase in paragraph (a) ''subpoenas for books, records, and other writings.'' to read ''subpoenas requiring persons to appear and testify, or produce books, records, and other writings.''.

PART 772—[AMENDED]

19. Part 772 is amended by:

a. Revising the definitions of ''Applicant'' , ''Exporter'', ''Forwarding agent'', ''Intermediate consignee'', ''Purchaser'', and ''Ultimate Consignee'';

b. Revising the phrase ''Shipper's Export Declaration (SED)'' in the definition for ''Export control document'' to read ''Shipper's Export Declaration (SED) or Automated Export System (AES) record'';

c. Removing the definition for ''U.S. exporter''; and

d. Adding definitions for ''AES'', ''Automated Export System (AES)'', ''End-user'', ''Order Party'', ''Other party authorized to receive license'', ''Principal parties in interest'', and ''Routed export transaction'' in alphabetic order, to read as follows:

PART 772—DEFINITION OF TERMS

* * * * *

AES. See ''Automated Export System.''

* * * * *

Applicant. The person who applies for an export or reexport license, and who has the authority of a principal party in interest to determine and

control the export or reexport of items. See § 748.4 of the EAR and definition for ''exporter'' in this part of the EAR.

* * * * *

Automated Export System (AES). AES is a nationwide system operational at all ports and for all methods of transportation through which export shipment data required by multiple agencies is filed electronically to Customs, using the efficiencies of Electronic Data Interchange (EDI). AES provides an alternative to filing paper Shipper's Export Declarations (SEDs), so that export information is collected electronically and edited immediately. For more information about AES, visit the Bureau of Census website at: http://www.customs.ustreas.gov/impoexpo/abaesint.htm

* * * * *

End-user. The person abroad that receives and ultimately uses the exported or reexported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.

* * * * *

Exporter. The person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States. Note that the Foreign Trade Statistics Regulations have a different definition for the term ''exporter''. Under the FTSR, the ''exporter'' is the U.S. principal party in interest (see Foreign Trade Statistics Regulations title 15 part 30).

* * * * *

Forwarding agent. The person in the United States who is authorized by a principal party in interest to perform the services required to facilitate the export of the items from the United States. This may include air couriers or carriers. In routed export transactions, the forwarding agent and the exporter may be the same for compliance purposes under the EAR.

* * * * *

Intermediate consignee. The person that acts as an agent for a principal party in interest for the purpose of effecting delivery of items to the ultimate consignee. The intermediate consignee may be a bank, forwarding agent, or other person who acts as an agent for a principal party in interest.

* * * * *

Order Party. The person in the United States who conducted the direct negotiations or correspondence with the foreign purchaser or ultimate consignee and who, as a result of these negotiations, received the order from the foreign purchaser or ultimate consignee.

* * * * *

Other party authorized to receive license. The person authorized by the applicant to receive the license. If a person and address is listed in Block 15 of the BXA–748P Multipurpose Application Form, the Bureau of Export Administration will send the license to that person instead of the applicant. Designation of another party to receive the license does not alter the responsibilities of the applicant, licensee or exporter.

* * * * *

Principal parties in interest. Those persons in a transaction that receive the primary benefit, monetary or otherwise, of the transaction. Generally, the principals in a transaction are the seller and the buyer. In most cases, the forwarding or other agent is not a principal party in interest.

* * * * *

Purchaser. The person abroad who has entered into a transaction to purchase an item for delivery to the ultimate consignee. In most cases, the purchaser is not a bank, forwarding agent, or intermediary. The purchaser and ultimate consignee may be the same entity.

* * * * *

Routed export transaction. A transaction where the foreign principal party in interest authorizes a U.S. forwarding or other agent to facilitate export of items from the United States.

* * * * *

Ultimate consignee. The principal party in interest located abroad who receives the exported or reexported items. The ultimate consignee is not a forwarding agent or other intermediary, but may be the end-user.

* * * * *

PART 774—[AMENDED]

Supplement No. 1 to Part 774—The Commerce Control List

20. Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms,'' and ''Toxins'', is amended by revising the License Requirements section of ECCN 1C355, to read as follows:

1C355 Chemical Weapons Convention (CWC) Schedule 2 and 3 Chemicals and Families of Chemicals, Not Controlled by ECCN 1C350 or by the Department of State Under the ITAR

License Requirements

Reason for Control: CW

Control(s)

CW applies to entire entry. A license is required for CW reasons only to CWC non-States Parties (destinations not listed in Supplement No. 2 to part 745), unless an End-Use Certificate is obtained by the exporter (see § 742.18 of the EAR). See § 745.2 of the EAR for End-Use Certificate requirements, and the License Requirements Notes of this entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons.

License Requirements Notes:

1. Chemicals listed in this entry may be shipped NLR (No License Required) when destined to most CWC States Parties (countries listed in Supplement No. 2 to part 745). Also see License Requirement Note 3.

2. Chemicals listed in this entry may be shipped NLR when destined to most non-States Parties (destinations *not* listed in Supplement No. 2 to part 745) if supported by an End-Use Certificate described by § 745.2 of the EAR and if the ECCN is indicated on the Shipper's Export Declaration in the appropriate space as provided in § 758.1 of the EAR. Chemicals listed in this entry require a license when exported to non-States Parties if the export is not supported by an End-Use Certificate described by § 745.2 of the EAR.

3. Chemicals listed in this entry may not be shipped NLR if restrictions of other sections of the EAR apply (*e.g.*, see the end-use and end-user restrictions of part 744 of the EAR and the restrictions that apply to embargoed countries in part 746 of the EAR).

4. MIXTURES: Mixtures controlled by this entry that contain certain concentrations of precursor and intermediate chemicals are subject to the following requirements:

a. Mixtures are controlled under this entry when containing at least one of the chemicals controlled under 1C355.a when the chemical constitutes more than 10 percent of the weight of the mixture.

b. Mixtures are controlled under this entry when containing at least one of the chemicals controlled under 1C355.b when the chemical constitutes more than 25 percent of the weight of the mixture.

c. Mixtures containing chemicals identified in this entry are not controlled by ECCN 1C355 when the controlled chemical is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

Note to mixtures: Calculation of concentrations.

a. *Exclusion.* No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;

b. Absolute Weight Calculation. When calculating the percentage, by weight, of components in a chemical mixture, include all components of the mixture, including those that act as solvents;

c. *Example.*

11% chemical listed in 1C355.a
39% chemical not listed in 1C355.a
50% Solvent
100% Mixture
11/100 = 11% chemical listed in 1C355.a

In this example, the mixture is controlled under this entry because a chemical listed in 1C355.a. constitutes more than 10 percent of the weight of the mixture.

5. *COMPOUNDS.* Compounds created with any chemicals identified in this ECCN 1C355 may be shipped NLR, unless those compounds are also identified in this entry.

Technical Notes: For purposes of this entry, a ''mixture'' is defined as a solid, liquid or gaseous product made up of two or more components that do not react together under normal storage conditions.

* * * * *

Dated: June 28, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–16894 Filed 7–6–00; 8:45 am]

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July 10, 2000

Part IX

Department of Housing and Urban Development

24 CFR Part 15

Revision of Freedom of Information Act Regulations; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 15

[Docket No. FR–4292–P–01]

RIN 2501–AC51

Revision of Freedom of Information Act Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's Freedom of Information Act (FOIA) regulations in their entirety. The rule would implement the amendments made by the Electronic Freedom of Information Act to FOIA. The proposed rule would also rewrite the FOIA regulations using plain language. Plain language is an approach to writing that promotes responsive, accessible, and understandable written communication. The rule would also make various streamlining and organizational changes to the regulations. These proposed amendments would simplify and improve the clarity of the HUD's FOIA requirements.

DATES: *Comments Due Date:* Submit comments on or before September 8, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments 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 during regular business hours (7:30 a.m. to 5:30 p.m. Eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Marylea Byrd, Assistant General Counsel, FOIA Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500, Room 10248; Telephone (202) 708–3866 (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:

I. Background

HUD's regulations at 24 CFR part 15 describe the policies and procedures governing public access to HUD records under the Freedom of Information Act (FOIA) (5 U.S.C. 552). Enacted in 1966, FOIA gives persons the right to request and receive a wide range of information from any Federal agency, subject to certain exemptions. As stated by President Clinton in his October 4, 1993 memorandum to the heads of all Federal departments and agencies, FOIA ''was enacted based upon the fundamental principle that an informed citizenry is essential to the democratic process and that the more the American people know about their government the better they will be governed.''

The Congress has amended FOIA several times, most recently in 1996 with the enactment of the Electronic Freedom of Information Act (Public Law 104–231, approved October 2, 1996; 110 Stat. 3048) (EFOIA). The 1996 amendments were designed to improve public access to government information and records, particularly electronic records, and expedite agency responses to requests for records under FOIA.

This proposed rule would revise HUD's FOIA regulations in their entirety in order to: (1) Implement the statutory amendments made by the Electronic Freedom of Information Act to FOIA; and (2) simplify and improve the clarity of HUD's freedom of information requirements. The following sections of this preamble summarize the major changes that would be made by this proposed rule to HUD's FOIA regulations.

II. Implementation of Electronic FOIA Amendments

As noted above, EFOIA made various amendments designed to enhance public access to agency records and agency processing of FOIA requests. The following is a summary of the major amendments made by EFOIA that would be implemented by this proposed rule.

Electronic Access to Information

EFOIA improves the ability of a requester to obtain information in an electronic format by requiring agencies to provide information in the format preferred by a requester, and by requiring agencies to provide more information on-line. This proposed rule would make several amendments designed to implement the EFOIA electronic information requirements. The following is a summary of the most significant of these amendments:

1. *Information available in electronic format.* Section 15.101 of this proposed rule describes HUD's overall policy concerning disclosing identifiable records. (This information is currently located in § 15.3.) This section has been revised to implement the EFOIA requirement that readily reproducible records be made available in the format requested, including an electronic format (5 U.S.C. 552(a)(3)(B)).

2. *Electronic Reading Room.* EFOIA requires that agencies make information available over ''electronic reading rooms'' on the internet (5 U.S.C. 552(a)(2)(E)). Section 15.102 of this proposed rule specifies where the public may inspect and copy the documents that HUD is required to make readily available under section 552(a)(2) of FOIA. (This information is included in current § 15.12.) HUD has reading rooms in Headquarters in Washington, DC and in each of the Secretary's Representative's offices listed in Appendix A to this document. This section has been amended to include the internet address of HUD's ''FOIA electronic reading room,'' which contains on-line access to HUD records. The proposed rule would also provide that requesters may use HUD's internet web site for submitting FOIA requests for records that are located in HUD Headquarters.

Enhanced FOIA Processing Procedures

EFOIA also modifies the deadlines and procedures for processing FOIA requests to provide faster processing for some requests, and to assist agencies to reduce backlogs and delays. This proposed rule would make various amendments to implement these enhanced FOIA processing procedures. The following is a summary of the most significant of these amendments:

1. *Multitrack processing.* EFOIA permits agencies to implement multitrack FOIA processing systems, based on the amount of work or time (or both) involved in processing FOIA requests (5 U.S.C. 552(a)(6)(D)). Under the first-come, first-served process used by agencies, FOIA requesters with simple requests could experience lengthy delays in the processing of their requests if the agency is handling a previous FOIA request involving voluminous records. Multitrack processing is designed to mitigate this problem.

Section 15.105 of this proposed rule explains how HUD will process FOIA requests. The proposed rule would provide for multitrack processing at § 15.105(a). Specifically, this proposed rule sets out a two track system: (1) A complex track, and (2) a routine track.

When HUD has a significant number of pending requests that prevents a responsive determination being made within 20 working days, the requests

will be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests. Factors HUD will consider in assigning a request to the simple or complex track will include whether the request involves the processing of voluminous documents and/or whether the request involves responsive documents from three or more HUD organizational units. Unless HUD determines the request is complex, HUD will place each request into the ''routine track.'' Within each of these tracks, HUD will process the requests on a first-in, first-out basis.

2. *Expedited processing.* EFOIA requires that agencies promulgate regulations authorizing expedited processing of FOIA requests for records if the requester demonstrates a ''compelling need'' for a speedy response (5 U.S.C. 552(a)(6)(E)). Section 15.105(b) of this proposed rule provides for expedited processing of FOIA requests. The proposed rule provides that HUD will consider a compelling need to exist if:

- The failure of a requester to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or a threatened loss of substantial due process rights; or
- If the requester is primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

3. *Changes in time periods for processing FOIA requests.* EFOIA amended the time periods for agency processing of FOIA requests. Specifically, EFOIA expanded the amount of time an agency has to provide an initial response to a FOIA request from ten working days to 20 working days (5 U.S.C. 552(a)(6)(A)). In unusual circumstances, the agency may extend this time period by an additional ten days (5 U.S.C. 552(a)(6)(B)(i)). If the additional time needed is more than 10 working days, the agency must offer the requester an opportunity to limit the scope of the request so that the agency may process it within the extra 10 working day period (5 U.S.C. 552(a)(6)(B)(ii)).

EFOIA defines ''unusual circumstances'' to include the need to:

- Search for, collect, and appropriately examine a voluminous amount of records;
- Search for and collect the records from other offices than the one handling the request; and
- Consult with another government office having a substantial interest in the determination of the FOIA request. (5 U.S.C 552(a)(6)(B)(iii).)

This proposed rule would implement the statutory amendments to the time period for responding to FOIA requests at § 15.104.

III. Clarifying Changes

In addition to implementing the statutory amendments made by EFOIA, this proposed rule would make several amendments to simplify and improve the clarity of HUD's freedom of information requirements. The following is a summary of the major clarifying changes that would be made by this rule:

Plain Language

This rule would rewrite the FOIA regulations using plain language, in response to President Clinton's Memorandum of June 1, 1998, entitled ''Plain Language in Government'' (63 FR 31885, Wednesday, June 10, 1998). In this memorandum, President Clinton directed Federal agencies to use plain language in all government writing. With respect to rules, President Clinton directed Federal agencies to use plain language in new proposed and final rules beginning January 1, 1999. In the same memorandum, President Clinton also urged Federal agencies to consider rewriting existing regulations in plain language, as resources permit.

Plain language is an approach to writing that promotes responsive, accessible, and understandable written communications. It involves the use of a number of writing tools to create documents that are visually inviting, logically organized, and understandable on the first reading. These writing tools include:

- Using the active voice and strong verbs;
- Using compact sentences;
- Using personal pronouns such as ''you'' and ''we'';
- Using common, everyday words;
- Avoiding surplus words and technical or legal jargon;
- Using tables to present information where appropriate; and
- Using a design and layout that increases comprehension.

HUD selected to rewrite the FOIA regulations in plain language, because it is important that the requirements governing the public's access to HUD records be simple to understand.

Streamlining and Organizational Changes

In addition to rewriting HUD's FOIA regulations in plain language, this proposed rule would also make various streamlining and organizational changes to 24 CFR part 15. The following is a brief summary of the major streamlining changes that would be made by this proposed rule:

1. *Consolidation of FOIA regulations.* Currently, HUD's FOIA regulations are located in seven separate subparts of 24 CFR part 15 (subparts A through C, E through G, and J). This proposed rule would simplify HUD's freedom of information requirements by consolidating them in subpart B of 24 CFR part 15.

Existing 24 CFR part 15, subparts H and I are not FOIA-related. Current subpart H, which describes the procedures HUD follows in responding to subpoenas or demands of courts and other agencies to produce or disclose documents, would be redesignated as subpart C. Current subpart I, which describes the procedures HUD follows concerning the testimony of its employees in legal proceedings, would be redesignated as subpart D. With the exceptions of the changes in designation and conforming amendments, these regulations would not be revised by this proposed rule.

2. *Removal of repetitive statutory language.* As part of the overall simplification of the FOIA regulations, HUD would remove codified language which simply restates statutory provisions. For example, this proposed rule does not include a section comparable to § 15.11 of the current rule, which simply restates section 552(1) of FOIA. Section 552(1) identifies the matters that HUD must publish in the **Federal Register**. Nor does the proposed rule restate the statutory exemptions in section 552(b) of FOIA currently contained in § 15.21(a).

3. *Clarification of FOIA request procedures.* Section 15.103 of the proposed rule describes the information that must be included in a FOIA request. The proposed rule would provide more instruction on what should be included in a request than does the current rule (see § 15.41 of the current rule). Among other clarifications, the proposed rule would ask the requester to specify a fee amount above which HUD and the requester would consult before the requester agrees to pay the fee. Proposed § 15.103 also seeks information concerning multitracking and expedited processing (see section II of this preamble).

4. *Time limits regarding fee payments.* Section 15.106 of the proposed rule would also add time limits on conferring about reformulating a request to reduce the fee and on paying or committing to pay a fee. Proposed § 15.106 would also provide that HUD can consider a FOIA request withdrawn

if the requester fails to respond within the specified period. HUD believes that this clarification is needed to avoid delays to other requesters that might otherwise occur because of the first-in, first-out policy.

IV. Findings and Certifications

Environmental Impact

This proposed rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321). The proposed revision of the FOIA-related provisions of 24 CFR part 15 falls within the exclusion provided by 24 CFR 50.19(c)(1), in that it does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule before publication and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule is procedural. Accordingly, the proposed rule would not have any impact on the substantive rights or duties of small entities requesting HUD records under the Freedom of Information Act. Furthermore, the fees charged under this rule are limited by FOIA to direct costs of searching for, reviewing, and duplicating the records processed for requesters and are not economically significant.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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 does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

List of Subjects in 24 CFR Part 15

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 15 as follows:

PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES

1. Revise the heading of part 15 to read as set forth above.

2. The authority citation for part 15 is revised to read as follows:

Authority: 42 U.S.C. 3535(d).

Subpart A also issued under 5 U.S.C. 552.

Section 15.107 also issued under E.O. 12958, 60 FR 19825, 3 CFR Comp., p. 333.

Subparts C and D also issued under 5 U.S.C. 301.

3. Revise subpart A to read as follows:

Subpart A—Purpose and Policy

Sec.
15.1 What is the purpose of this part?
15.2 What definitions apply to this part?

§ 15.1 What is the purpose of this part?

(a) *Subpart B of this part.* Subpart B of this part describes the procedures by which HUD makes documents available under the Freedom of Information Act (FOIA) (5 U.S.C. 552). Subpart A of this part applies to all HUD organizational units; however, applicability of subpart A to the Office of the Inspector General is subject to parts 2002 and 2004 of the title.

(b) *Subpart C of this part.* Subpart C of this part describes the procedures HUD follows in responding to subpoenas or demands of courts and other agencies to produce or disclose documents.

(c) *Subpart D of this part.* Subpart D of this part describes the procedures HUD follows concerning the testimony of its employees in legal proceedings.

(d) *Inapplicability of subparts B and C to Office of Inspector General.* Subparts B and C of this part do not apply to employees in the Office of the Inspector General. The procedures that apply to employees in the Office the Inspector General are described in part 2004 of this title.

§ 15.2 What definitions apply to this part?

The following definitions apply to this part.

(a) *Terms defined in part 5 of this title.* The terms *HUD, Secretary*, and *Organizational unit* are defined in part 5 of this title.

(b) *Other terms used in this part.* As used in this part:

Business information means commercial or financial information provided to HUD by a submitter that arguably is protected from disclosure under Exemption 4 (42 U.S.C. 552(b)(4)) of FOIA.

Duplication means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.,* magnetic tape or disk), among others.

Educational institution means:

(i) A preschool;

(ii) A public or private elementary or secondary school;

(iii) An institution of graduate higher education;

(iv) An institution of undergraduate higher education

(v) An institution of professional education; or

(vi) An institution of vocational education, that primarily (or solely) operates a program or programs of scholarly research.

Employee of the Department means a current or former officer or employee of the United States appointed by or subject to the supervision of the Secretary, but does not include an officer or employee covered by part 2004 of this title.

FOIA means the Freedom of Information Act (5 U.S.C. 552).

Legal proceeding includes any proceeding before a court of law or other authority, i.e., administrative board or commission, hearing officer, arbitrator or other body conducting a quasi-judicial or legislative proceeding.

Legal proceeding in which the United States is a party means any legal proceeding including as a named party the United States, the Department of Housing and Urban Development, or

any other Federal executive or administrative agency or department, or any official thereof in his official capacity.

Legal proceeding among private litigants means any legal proceeding in which the United States is not a party.

News means information that is about current events or that would be of current interest to the public.

Person means person as defined in 5 U.S.C. 551(2). It includes corporations and organizations as well as individuals.

Review means the process of examining a document located in response to a request to determine whether any portion of it may be withheld, excising portions to be withheld, and otherwise preparing the document for release. Review time includes time HUD spends considering any formal objection to disclosure made by a submitter under § 15.108. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search includes all time spent looking manually or by automated means for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

Submitter means any person or entity who provides business information, directly or indirectly, to HUD. The term includes, but is not limited to, corporations, State governments, and foreign governments.

4. Revise subpart B to read as follows:

Subpart B—FOIA Disclosure of Information

Sec.

15.101 What is HUD's overall policy concerning disclosing identifiable records?
15.102 Where and when may I inspect and copy records that FOIA requires HUD to make regularly available to the public?
15.103 How can I get other records from HUD?
15.104 What are the time periods for HUD to respond to my request for records?
15.105 How will HUD process my request?
15.106 How will HUD respond to my request?
15.107 How does HUD handle requests that involve classified records?
15.108 What are HUD's policies concerning designating confidential commercial or financial information under Exemption 4 of the FOIA and responding to requests for business information?
15.109 How will HUD respond to a request for information from Form HUD–92410 (Statement of Profit and Loss)?
15.110 What fees will HUD charge?
15.111 How do I appeal a denial of my request for records or a fee determination?
15.112 How will HUD respond to my appeal?

§ 15.101 What is HUD's overall policy concerning disclosing identifiable records?

HUD will fully and responsibly disclose its identifiable records and information consistent with competing public interests concerning the national security, personal privacy, agency deliberative process, and obligations of confidentiality as are recognized by FOIA. HUD will make a record available in the form or format requested, if the record is readily reproducible in that format.

§ 15.102 Where and when may I inspect and copy records that FOIA requires HUD to make regularly available to the public?

(a) You may inspect and copy records, including indices of the records, that section 552(a)(2) of FOIA requires HUD make available to the public at HUD's reading rooms. HUD has reading rooms in Headquarters in Washington, DC and in each of the Secretary's Representative's offices. These reading rooms are open during the business hours for the HUD office in which they are located.

(b) This information is also available to you through HUD's Internet web site at http://www.hud.gov.

§ 15.103 How can I get other records from HUD?

(a) *Generally.* You may submit a written request for copies of records in person or by mail.

(b) *Records located in a HUD field office.* If you are submitting a request for records located in a HUD field office, you should deliver or mail your request to the FOIA Liaison in each HUD Field Office.

(c) *Records located in HUD headquarters.* If you are submitting a request for records located in HUD Headquarters, you should deliver or mail your request to the FOIA Division, Office of the General Counsel. You may also use the FOIA electronic request form on HUD's Internet web site at http://www.hud.gov.

(d) *What should I include in my FOIA request?* In your FOIA request you should:

(1) Clearly state that you are making a FOIA request. Although Federal agencies are required to process all requests for documents as Freedom of Information Act requests, whether or not specifically designated as FOIA requests, failure to clearly state that you are making a FOIA request could unduly delay the initial handling of your correspondence through HUD's FOIA processing;

(2) Reasonably describe the records you seek. Include information that you may know about the documents you are requesting;

(3) Indicate the form or format in which you would like the record made available;

(4) State your agreement to pay the fee. You may specify a dollar amount above which you want HUD to consult with you before you will agree to pay the fee;

(5) Indicate the fee category that you believe applies to you (see § 15.110);

(6) If you are making a request on behalf of another person for information about that person, include a document signed by that person authorizing you to request the information on his or her behalf; and

(7) If you are requesting expedited processing, include your certification setting out the facts you believe show that there is a compelling need (see § 15.104(d)) to expedite processing of your request.

§ 15.104 What are the time periods for HUD to respond to my request for records?

(a) *What time limits generally apply?* If you have met the fee requirements of § 15.110, HUD, in general, will respond within 20 working days after the correct office receives your request. If you have sent your request to the wrong office, that office will send it to the correct office within 10 working days and will send you an acknowledgment letter.

(b) *What time limits apply to requests made on behalf of another person?* The time limits described in paragraph (a) of this section also apply to requests you make on behalf of another person for information about that person. However, the time limits will not commence to run until HUD's receipt of the document signed by that person authorizing you to request information on his or her behalf. If you make your request on behalf of another person without including such signed authorization, HUD will inform you of the authorization needed.

(c) *What time limits apply in unusual circumstances?* If you have requested an especially large number of records, the records are not located in the office handling the request, or HUD needs to consult with another government office, HUD will notify you that extra time is required. If the extra time needed is more than 10 working days beyond the general time limit set out in paragraph (a) of this section, HUD will offer you any opportunity to limit the scope of your request so that HUD may process it within the extra 10 working day period.

(d) *What time limits apply to my request for expedited processing?* If you

requested expedited processing, HUD will notify you within 10 working days after it receives your request whether it will grant expediting processing.

§ 15.105 How will HUD process my request?

(a) *Multitracking.* HUD places each request in one of two tracks. HUD places requests in its simple or complex track based on the amount of work and time involved in processing the request. Factors HUD will consider in assigning a request in the simple or complex track will include whether the request involves the processing of voluminous documents and/or whether the request involves responsive documents from three or more organizational units. Within each track, HUD processes requests in the order in which they are received.

(b) *Expedited processing.* HUD may take your request or appeal out of normal order if HUD determines that you have a compelling need for the records. If HUD grants your request for expedited processing, HUD will give your request priority and will process it as soon as practicable. HUD will consider a compelling need to exist if:

(1) Your failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or a threatened loss of substantial due process rights; or

(2) You are primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

§ 15.106 How will HUD respond to my request?

(a) *Who will respond to my request?* (1) The FOIA Division of the Office of General Counsel in HUD Headquarters and the FOIA liaisons in each HUD Field Office are authorized to release copies of any HUD records unless disclosure is clearly not appropriate under FOIA.

(2) The FOIA Division in HUD Headquarters and the FOIA liaisons in each HUD Field Office may deny a request for a record in accordance with the provisions of FOIA and this part.

(b) *What type of a response will I receive?* Within the time limit described in § 15.103, HUD will either:

(1) Agree to give you all the records you requested;

(2) Advise you that HUD will not give you some or all of the records you requested. Any denial or partial denial of a requested record must be concurred in by the FOIA Division in Headquarters, by counsel in the Field Offices, or by counsel in HUD's Departmental Enforcement Center Satellite Offices. In this case, HUD will:

(i) Explain why it has decided not to comply fully with your request, citing specific exemptions where applicable;

(ii) Describe the records denied or, if there are fewer than 21 records denied, list them specifically;

(iii) Estimate the volume of the records denied unless doing so would harm a protected interest; and

(iv) Explain how to appeal that decision, and provide the name and address of the HUD official to whom you should submit your appeal.

(3) Tell you that HUD's estimate of the fee is more than you have agreed to pay and ask to confer within 10 days to see if you can reformulate your request so that HUD can meet your request at a fee that is acceptable to you; or

(4) Tell you that you will not receive a response until you have either paid your fee or committed to the amount of fee you will pay, as applicable, and will provide you 10 days to pay, or commit to pay, the fee.

(5) If you requested expedited processing, advise you whether your request is granted or denied and, if your request is denied, advise you of your right to appeal.

(c) *What action may HUD take if I fail to respond?* If you fail to respond within a period specified in this subpart, HUD may consider your request for records withdrawn and may terminate processing of your request.

§ 15.107 How does HUD handle requests that involve classified records?

If your request involves the release of documents that are classified under Executive Order 12958, HUD will refer your request and the pertinent documents to the originating agency for processing. HUD may refuse to confirm or deny the existence of the requested information if the originating agency determines that the fact of its existence is itself classified.

§ 15.108 What are HUD's policies concerning designating confidential commercial or financial information under Exemption 4 of the FOIA and responding to requests for business information?

(a) *HUD's general policy concerning business information which may be considered as confidential commercial or financial information.* Except as provided in this section or otherwise required by law, HUD officers and employees may not disclose business information which is considered as confidential commercial or financial information to anyone other than to HUD officers or employees who are properly entitled to the information to perform their official duties.

(b) *How does a submitter make a claim that business information is confidential commercial or financial information?* (1) If you are a submitter, you may request confidential treatment of business information at the time the information is submitted to HUD or within a reasonable time after it is submitted.

(2) To obtain a designation of confidentiality, you must:

(i) Support your request with an authorized statement or a certification giving the facts and the legal justification for your request and stating that the information has not been made public; and

(ii) Clearly designate the information that you consider confidential.

(3) Your designation of confidentiality will expire 10 years after the date the information was submitted to HUD, unless you have provided a reasonable explanation for a later expiration date.

(c) *How will HUD respond to a request for business information?* If the information requested has been designated in good faith by the submitter as information to be protected under 5 U.S.C. 552(b)(4) (''Exemption 4'') or if HUD has reason to believe that the information may be protected by Exemption 4, HUD shall:

(1) Unless an exception in paragraph (c)(2) of this section applies, promptly notify the submitter about the request or the administrative appeal and give the submitter 10 working days to submit a written objection to disclosure. HUD will describe the requested business information or will provide copies of all or a portion of the records;

(2) If any of the following circumstances apply, HUD will not notify the submitter:

(i) HUD determines that the information should not be disclosed;

(ii) The information has been published lawfully or has been made available officially to the public;

(3) A law other than FOIA requires HUD to disclose the information;

(4) A HUD regulation requires HUD to disclose the information. The regulation must:

(i) Have been adopted pursuant to notice and public comment; and

(ii) Specify narrow classes of records submitted to HUD that are to be released under the FOIA.

(d) *Notice to requester.* At the same time HUD notifies the submitter, HUD will also notify the requester that the request is subject to the provisions of this section and that the submitter is being afforded an opportunity to object to disclosure of the information.

(e) *Opportunity to object to disclosure.* If the submitter timely objects to disclosure, HUD will consider the submitter's objections, but will not be bound by them. HUD generally will not consider conclusory statements that particular information would be useful to competitors or would impair sales, or other similar statements, sufficient to justify confidential treatment. Information provided by a submitter or its designee may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* If after considering the submitter's objections, HUD decides to disclose business information over the objection of a submitter, HUD will send a written notice of intent to disclose to both the submitter and the requester. HUD will send these notices at least 10 working days before the specified disclosure date. The notices will include:

(1) A statement of the reasons why HUD rejected the submitter's disclosure objections;

(2) A description of the business information to be disclosed; and

(3) A disclosure date.

(g) *What other policies apply to a submitter?* (1) *HUD notice of FOIA lawsuit.* HUD will promptly notify the submitter of any suit to compel HUD to disclose business information.

(2) *Determination of confidentiality.* HUD will not determine the validity of any request for confidentiality until HUD receives a request for disclosure of the information.

(3) *Current mailing address for the submitter.* Each submitter must give HUD a mailing address for receipt of any notices under this section, and must notify HUD of any change of address.

§ 15.109 How will HUD respond to a request for information from Form HUD–92410 (Statement of Profit and Loss)?

(a) *To whom will HUD disclose the information?* HUD will release information from Form HUD–92410 (or a HUD approved substitute form that the mortgagor may have submitted) only to eligible potential purchasers and only during the period specified by HUD for the mortgage sale.

(b) *Under what conditions will HUD release such information?* HUD will release the information only if all of the following three conditions are met:

(1) The information concerns a project that is subject to a HUD-held mortgage which HUD is selling under the authority of sections 207 (k) and (l) of the National Housing Act (12 U.S.C. 1713 (k) and (l)) or section 7(i)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)(3)).

(2) The eligible potential purchasers have agreed to:

(i) Keep the information confidential;

(ii) Disclose the information only to potential investors in the mortgage and only for the period specified by HUD for the mortgage sale and to notify those potential purchasers of their obligations under this section;

(iii) Use the information only to evaluate the mortgage in connection with the mortgage sale; and

(iv) To follow disclosure procedures for that sale that have been established by the Secretary.

(3) The potential investors in the mortgage have agreed to keep the information confidential and to use the information only to evaluate the mortgage in connection with their investment decision.

(c) *To whom may potential investors disclose such information?* Potential investors in the mortgage may disclose the information to other entities only if the disclosure is:

(1) Necessary for the investor's evaluation of the mortgage;

(2) Made in accordance with disclosure procedures for the specific sale that have been established by HUD; and

(3) Limited to the period specified by HUD for the mortgage sale.

(d) *What sanctions are available for improper disclosure of such information?* An eligible potential purchaser or a potential investor (who has received the information from a potential purchaser and has been notified by that entity of its obligations under paragraph (b) of this section), who discloses information from Form HUD–92410 in violation of this regulation, may be subject to sanctions under part 24 of this title.

§ 15.110 What fees will HUD charge?

(a) *How will HUD determine your fee?* HUD will determine your fee based on which category of requester you are in and on the other provisions of this section. With your request, you should submit information to help HUD determine the proper category. If HUD cannot tell from your request, or if HUD has reason to doubt the use to which the records will be put, HUD will ask you to provide additional information before assigning the request to a specific category.

(b) *What are the categories of requesters?*—(1) *Commercial use requester.* You are a commercial use requester if you request information for a use or purpose that furthers your commercial, trade, or profit interests or those interests of the person on whose behalf you have made the request. In determining whether your request properly belongs in this category, HUD determines the use to which you will put the documents requested.

(2) *Educational requester.* You are an educational requester if your request is on behalf of an educational institution and you do not seek the records for a commercial use, but to further scholarly research.

(3) *Non-commercial scientific requester.* You are a non-commercial scientific requester if you are not a commercial use requester and your request is on behalf of an organization that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(4) *Representative of the news media requester.* (i) You are a representative of the news media requester if you actively gather news for an entity that is primarily organized and operated to publish or broadcast news to the public.

(ii) Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public.

(iii) Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but HUD may also look to the past publication record of a requester in making this determination.

(iv) If you are a representative of the news media requester, HUD will not consider you to be a commercial use requester.

(5) *Other requester.* You are considered an ''other'' requester if you do not fall within the categories of requesters described above.

(c) *FOIA Fee Schedule.* The following table sets out the Fee Schedule that HUD uses to determine your fee. The rates for professional and clerical search and review includes the salary of the employee performing the work. The duplication cost includes the cost of operating duplicating machinery. The computer run time includes the cost of operating a central processing unit for that portion of the operating time attributable to searching for responsive records, as well as the costs of operator/programmer salary apportionable to the search. HUD's fee schedule does not include overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

Activity	Rate	Commercial use requester	News media, educational research, or scientific research requester	Other requester
Professional search	$37.00 per hour	Applies	Does not apply	Applies. No charge for first two hours of cumulative search time.
Professional review	$37.00 per hour	Applies	Does not apply	Does not apply.
Clerical search	$16.35	Applies	Does not apply	Applies. No charge for first two hours of cumulative search time.
Clerical review	$16.35 per hour	Applies	Does not apply	Does not apply.
Programming services	$35.00 per hour	Applies	Does not apply	Applies.
Computer run time (includes only mainframe search time not printing).	The direct cost of conducting the search.	Applies	Does not apply	Applies.
Duplication costs	$0.15 per page	Applies	Applies. No charge for first 100 pages.	Applies. No charge for first 100 pages.

(d) *How does HUD assess review charges?* HUD will assess review charges only for the first time it analyzes the applicability of a specific exemption to a particular record or portion of a record. HUD will not charge for its review at the administrative appeal level of an exemption already applied. If HUD has withheld in full a record or portions of a record under an exemption which is subsequently determined not to apply, HUD will assess charges for its review to determine the applicability of other exemptions not previously considered.

(e) *How does HUD handle multiple requests?* If you, or others acting with you, make multiple requests at or about the same time for the purpose of dividing one request into a series of requests for the purpose of evading the assessment of fees, HUD will aggregate your requests for records. In no case will HUD give you more than the first two hours of search time, or more than the first 100 pages of duplication without charge.

(f) *Unsuccessful searches.* If HUD's search for records is unsuccessful, HUD will still bill you for the search.

(g) *No charge for costs under $25.* HUD will not charge you a fee if the total amount calculated under this section is less than $25.00.

(h) *Reducing fees in the public interest.* If HUD determines that disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that you are not seeking the information for your own commercial interests, HUD may waive or reduce the fee.

(i) *When do I pay the fee?* HUD will bill you when it responds to your request. You must pay within thirty-one calendar days. If the fee is more than $250.00 or you have a history of failing to pay FOIA fees in a timely manner, HUD will ask you to remit the estimated amount and any past due charges before sending you the records.

(j) *What happens if I do not pay the fees?* (1) If you do not pay by the thirty-first day after the billing date, HUD will charge interest at the maximum rate allowed under 31 U.S.C. 3717.

(2) If you do not pay the amount due within ninety calendar days of the due date, HUD may notify consumer credit reporting agencies of your delinquency.

(3) If you owe fees for previous FOIA responses, HUD will not respond to further requests unless you pay the amount due.

(k) *Contract services.* HUD will contract with private sector sources to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient method. When doing so HUD will charge the cost to the requester that the private sector source has charged HUD for performing these tasks. In some instances, these costs may be higher than the charges HUD would ordinarily charge if the processing tasks had been done by the agency itself. In no case will HUD contract out responsibilities which the FOIA provides that HUD alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. HUD will ensure that, when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the National Technical Information Service, HUD will inform requesters of the steps necessary to obtain records from those sources. Information provided routinely in the normal course of business will be provided at no charge.

§ 15.111 How do I appeal a denial of my request for records or a fee determination?

(a) *To what address do I submit my appeals?* You must submit your appeal, in writing, to the address specified in HUD's notice responding to your FOIA request (see § 15.106(a)(2)(iv)). If you send your appeal to the wrong HUD office, that office will forward it to the correct office. That office will also notify you that it has so forwarded your appeal and advise you that, for processing purposes, the time of receipt will be when the appropriate office receives your appeal.

(b) *How much time do I have to submit an appeal?* Your written appeal must be postmarked within 30 calendar days of the date of the HUD determination from which you are appealing. If your appeal is transmitted by other than the United States Postal Service (i.e., facsimile, messenger or delivery service) it must be received in the appropriate office by close of business on the 30th calendar day after the date of the HUD determination.

(c) *What information must I provide if I am appealing a denial of request for information?* If you are appealing a denial of your request for information, the appeal must contain the following information:

(1) A copy of your original request;

(2) A copy of the written denial of your request; and

(3) Your statement of the facts and legal arguments supporting disclosure.

(d) *What information must I provide if I am appealing a fee determination?* If you are appealing a fee determination, including a denial of your request for HUD to waive the fee, the appeal must contain the following information:

(1) The address of the office which made the fee determination from which you are appealing;

(2) The fee that office charged;

(3) The fee, if any, you believe should have been charged;

(4) The reasons you believe that your fee should be lower than the fee which the Agency charged or should have been waived; and

(5) A copy of the initial fee determination and copies of any correspondence concerning the fee.

(e) *What information must I provide if I am appealing a denial of expedited processing?* If you are appealing a denial of your request for expedited processing, your appeal must contain the following information:

(1) A copy of your original request;

(2) A copy of the written denial of your request; and

(3) Your statement of the facts and legal arguments supporting expedited processing.

§ 15.112 How will HUD respond to my appeal?

(a) *How much time does HUD have to decide my appeal?* HUD will decide your appeal of a denial of expedited processing within 10 working days after its receipt. For any other type of appeal, HUD will decide your appeal within 20 working days after its receipt. HUD may have an additional 10 working days if unusual circumstances require.

(b) *What action will HUD take if it grants my appeal?* (1) *Appeal of a denial of request for information.* If you are appealing a decision to deny your request for records, HUD will either:

(i) Give you the records you requested or advise you that the records will be provided by the originating office;

(ii) Give you some of the records you requested while declining to give you other records you requested, tell you why HUD has concluded that the documents were exempt from disclosure under FOIA, and tell you how to obtain judicial review of HUD's decision; or

(iii) Decline to give you the records you requested, tell you why HUD has concluded that the records were exempt from disclosure under FOIA, and tell you how to obtain judicial review of HUD's decision.

(2) *Appeal of a fee determination.* If you are appealing a fee determination, HUD will either:

(i) Waive the fee or charge the fee that you have requested;

(ii) Modify the original fee charged, and explain why it has determined that the fee is appropriate; or

(iii) Advise you that the original fee charged was appropriate, and explain why it has determined that the fee is appropriate.

(3) *Appeal of a denial of expedited processing.* If you are appealing a denial of your request for expedited processing, HUD will either:

(i) Agree to expedited processing of your request; or

(ii) Advise you that the decision to deny expedited processing has been affirmed, and tell you how to obtain judicial review of HUD's decision.

5. Remove subparts C, D, F, G, and J.

6. Redesignate subparts H, consisting of §§ 15.71 through 15.74, as subpart C, consisting of §§ 15.201 through 15.204, to read as follows:

Subpart C—Production In Response to Subpoenas or Demands of Courts or Other Authorities

Sec.
15.201 Purpose and scope.
15.202 Production or disclosure prohibited unless approved by the Secretary.
15.203 Procedure in the event of a demand for production or disclosure.
15.204 Procedure in the event of an adverse ruling.

7. In newly designated § 15.201, the undesignated paragraph is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 15.201 Purpose and scope.

* * * * *

(b) The term ''legal proceeding'' has the meaning given in § 15.301(b).

§ 15.203 [Amended]

8. In newly designated § 15.203(a), revise the reference to § 15.71 to read § 15.201.

§ 15.204 [Amended]

9. In newly designated § 15.204, revise the reference to § 15.73(b) to read § 15.203(b).

10. Redesignate subpart I, consisting of §§ 15.81 through 15.85, as subpart D, consisting of §§ 15.301 through 15.309, to read as follows:

Subpart D—Testimony of Employees in Legal Proceedings

Sec.
15.301 Purpose.
15.302 Testimony in proceedings in which the United States is a party.
15.303 Legal proceedings among private litigants; general rule.
15.304 Legal proceedings among private litigants; subpoenas.
15.305 Legal proceedings among private litigants; expert or opinion testimony.

§ 15.304 [Amended]

11. In newly designated § 15.304, revise the reference to §§ 15.71–15.74 to read §§ 15.201–204.

Dated: June 14, 2000.

Andrew Cuomo,

Secretary.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A—Reading Rooms

The Department maintains a reading room in Headquarters, 451 Seventh Street, SW, Washington, DC 20410 and in each of its Secretary Representative's Offices as follows:

New England, Boston Office—Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222–1092. The New England Office oversees jurisdiction for HUD Offices located in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island.

New York/New Jersey, New York Office—26 Federal Plaza, New York, New York 10278–0068. The New York/New Jersey Office oversees jurisdiction for HUD Offices located in New York and New Jersey.

Mid Atlantic, Philadelphia Office—Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392. The Mid Atlantic Office oversees jurisdiction for HUD Offices located in Pennsylvania, Delaware, Maryland, Virginia, and West Virginia.

Southeast/Caribbean, Atlanta Office—Five Points Plaza Building, 40 Marietta St., Atlanta, Georgia 30303. The Southeast/Caribbean Office oversees jurisdiction for HUD Offices located in Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, and Puerto Rico.

Midwest, Chicago Office—Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507. The Midwest Office oversees jurisdiction for HUD Offices located in Illinois, Indiana, Ohio, Michigan, Wisconsin, and Minnesota.

Southwest, Fort Worth Office—Burnett Plaza Building, 801 Cherry Street, Fort Worth, Texas 76102. The Southwest Office oversees jurisdiction for HUD Offices located in Oklahoma, Texas, Arkansas, Louisiana, and New Mexico.

Great Plains, Kansas City Office—Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406. The Great Plains Office oversees jurisdiction for HUD Offices located in Missouri, Iowa, Kansas, and Nebraska.

Rocky Mountain, Denver Office—633 17th Street, Denver, Colorado 80202–3607. The Rocky Mountain Office oversees jurisdiction for HUD Offices located in Colorado, Utah, Wyoming, North Dakota, South Dakota, and Montana.

Pacific/Hawaii, San Francisco Office—Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, PO Box 36003, San Francisco, California 94102–3448. The Pacific/Hawaii Office oversees jurisdiction for HUD Offices located in California, Nevada, Arizona, and Hawaii.

Northwest/Alaska, Seattle Office—Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, Washington 98104–1000. The Northwest/Alaska Office oversees jurisdiction for HUD Offices located in Alaska, Washington, Oregon, and Idaho.

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Federal Register

Monday,
July 10, 2000

Part X

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Inviting Applications and Pre-Applications for Fiscal Year 2000; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of a Final Funding Priority for Fiscal Year 2000 for one Disability and Rehabilitation Research Project (DRRP)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces a final funding priority for one DRRP under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal year 2000. The Assistant Secretary takes this action to focus research attention on an area of national need. The priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority takes effect on August 9, 2000.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. If you use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: donna—nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains a final priority under the Disability and Rehabilitation Research Projects and Centers Program for a DRRP on Information Technology Technical Assistance and Training (ITTA).

The final priority refers to NIDRR's Long Range Plan (the Plan). The Plan can be accessed on the World Wide Web at: *http://www.ed.gov/legislation/FedRegister/other/1999–12/68576.html.*

This final priority supports the National Education Goal that calls for every American to possess the skills necessary to compete in a global economy.

The authority for the Assistant Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762 and 764). Regulations governing this program are found in 34 CFR Part 350.

Note: This notice of a final priority does not solicit applications. A notice inviting applications is published in this issue of the **Federal Register**.

Analysis of Comments and Changes

On May 8, 2000 the Assistant Secretary published a notice of a proposed priority in the **Federal Register** (64 FR 26588). The Department of Education received 3 letters commenting on the notice of proposed priority by the deadline date. Technical and other minor changes—and suggested changes the Assistant Secretary is not legally authorized to make under statutory authority—are not addressed.

Comment: The needs assessment developed under Activity 1 and the training materials developed under Activity 2 should reflect both current technology and technology that is immanent. In doing so, the grantee should be required to collaborate with the Federal Communications Commission, the National Institute of Standards, and other agencies that have advanced technology operations.

Discussion: NIDRR agrees that the needs assessment and the training materials should reflect both current technology and foreseeable technological developments. NIDRR also agrees that collaboration with relevant Federal agencies is important and is a required component of the priority. The applicant may propose to coordinate with other agencies and organizations as deemed necessary. The peer review process will evaluate the merit of each applicant's proposed activities.

Changes: None.

Comment: Considering the rapid development of both the host technologies and the practice of universal design, it is important that training materials and instructional modules developed under activity 2 be developed and provided in ways that are amenable to very rapid update and renewal.

Discussion: NIDRR agrees that it is important for training materials to be reflective of rapid technological change. NIDRR anticipates that the successful applicant will propose activities that take into account rapid technological change as discussed in the background statement. The peer review process will evaluate the merits of each applicant's proposed activities.

Changes: None.

Comment: One commenter recommended that an activity be added that requires the grantee to develop and maintain a list of ''best practices'' and to make that list available to other organizations working in this field.

Discussion: An applicant may propose to develop and maintain a list of best practices. NIDRR elects to allow the applicant the choice as to whether to include such an activity. The peer review process will evaluate the merits of each applicant's proposed activities.

Changes: None.

Comment: One commenter stated that the background statement, specifically the fourth paragraph of the background statement that talks about ''a shortage of individuals trained to educate consumers, consumer service professionals, technical writers, web developers, marketers, and other information technology related professionals about accessible and usable electronic and information technologies'' should be expanded to include telecommunications products.

Discussion: Telecommunications products is included in the definition of electronic and information technology in the notice of proposed rule making published in the **Federal Register** (65 FR 17351) by the Access Board on March 31, 2000. Based on this definition NIDRR expects that telecommunications products will be considered in each application.

Changes: None.

Comment: The target audiences mentioned in Activity 1 should focus on those who are tasked with implementing Section 508 and Section 255 and include state procurement officers, designers of telecommunications and information technology products, others within information technology and telecommunications companies who make decisions regarding product design (including product managers, marketers, sales and customer service staff, human factors professionals, regulatory compliance specialists, and executives), web developers of government sites, consumers and disability-related organizations, and relevant industry groups and professional associations.

Discussion: NIDRR believes that the language in Activity 1, while specific, is not limiting. The applicant is free to include other audiences and/or elaborate upon identified audiences. The peer review process will evaluate the merits of each applicant's proposed activities.

Changes: None.

Comment: One commenter recommended that this center be required to coordinate efforts with other Federal grantees and contractors responsible for providing training and technical assistance related to Section 508 and Section 255 including those responsible for providing training and technical assistance to Federal procurement officers and those

responsible for the Section 508 Web Site content.

Discussion: The priority directs the applicant to collaborate with relevant Federal agencies and other agencies as identified by NIDRR. Therefore, the applicant is not limited in the nature, scope or number of agencies to be targeted in the application for coordination efforts. The peer review process will evaluate the merits of each applicant's proposed activities.

Changes: None.

Comment: One commenter stated that Activity 7 should be expanded to include the telecommunications field.

Discussion: Telecommunications is included in the definition of electronic and information technology in the notice of proposed rule making published in the **Federal Register** (65 FR 17351) by the Access Board on March 31, 2000. Based on this definition NIDRR expects that telecommunications will be considered in each application.

Changes: None.

Disability and Rehabilitation Research Projects

Authority for DRRPs is contained in section 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13–350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Priority

Under 34 CFR 75.105(c)(3) the Assistant Secretary will give an absolute preference to applications that meet the following priority. The Assistant Secretary will fund under this competition only an application that meets this absolute priority.

Priority: Information Technology Technical Assistance and Training Center

Background

The emerging digital economy is fundamentally altering the way Americans work. The advent of powerful computers, high speed modems, sophisticated telecommunications networks, fiber optics, broadband network capacity, intranets, the Internet, the World Wide Web (WWW), and satellites has enabled computer and information experts to build a global information network that is unparalleled. These technologies, and how we use them, are undergoing rapid changes that result in a new wave of information flow that touches all facets of society, including education, employment and daily living. In this period of rapid technical, economic, and social change, access to electronic and information technologies is essential for everyone. Unfortunately, while the availability of information technology holds tremendous promise to level the playing field, the proliferation of electronic and information technologies does not guarantee accessibility and usability for individuals with disabilities.

The electronic and information technology industry has been growing at more than double the rate of the overall economy—a trend that is likely to continue (The Emerging Digital Economy II, a report by the U.S. Department of Commerce, June, 1999). Because of the increase in availability of the Internet, 20 million salaried workers telecommuted from their homes last year. That number is expected to reach 130 million by 2003 (InfoTech Trends, Fourth Quarter, 1998). Electronic mail, once considered an elite mode of communication for university-based researchers and scientists, is now routinely used by workers to instantly exchange visual and audible information in readable and reusable formats (e.g., computer files, charts, figures, tables, images, databases, and software packages) using one of the estimated 14,000 Internet service providers worldwide (InfoTech Trends, Second Quarter, 1999).

In today's market, electronic and information technology product cycles are measured in months, not years. The same can be said for product lifetimes. This rapid proliferation of technologies has emphasized the need for universal design—a process whereby environments and products are designed with built-in flexibility so they are usable by as many people as possible, regardless of age and ability, at no additional cost to the user. Given the rapid evolution of each generation, new products often do not include universal design features, thus increasing the need for the expensive process of retrofitting.

Unfortunately, there is a shortage of individuals knowledgeable about the principles of universal design and the benefits of incorporating universal design features into electronic and information technologies. There is also a shortage of individuals trained to educate consumers, customer service professionals, technical writers, web developers, marketers, and other information technology related professionals about accessible and usable electronic and information technologies.

Congress has passed landmark legislation that is intended to maximize the full inclusion and integration of individuals with disabilities in society, including increased access to electronic and information technology. These laws, and their provisions, include the Hearing Aid Compatibility Act of 1988, the Television Decoder Circuitry Act of 1990, the Americans with Disabilities Act (ADA) of 1990, the Telecommunications Act of 1996, the Assistive Technology Act (AT Act) of 1998, and the Workforce Investment Act of 1998, which includes sections 504 and 508 of the Rehabilitation Act of 1973, as amended.

Section 255 of the Telecommunications Act of 1996 requires telecommunications service providers and equipment manufacturers to make their services and equipment accessible by persons with the full range of disabilities, if readily achievable. If a manufacturer or service provider claims this is not readily achievable, the manufacturer or service provider must still ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access. On July 19, 1999, the Federal Communications Commission (FCC) adopted rules and guidelines to implement section 255 of the Telecommunications Act.

Section 508 of the Rehabilitation Act of 1973, as amended, requires access to the Federal government's electronic and information technology. Section 508 applies to all Federal departments and agencies when they develop, procure, maintain or use electronic and information technology. Federal departments and agencies must ensure equal access to, and use of, electronic and information technology for Federal employees with disabilities and members of the public seeking information or services from their agency comparable to those who do not have disabilities, unless such a requirement would cause an undue burden. The Access Board published a notice of proposed rulemaking in the **Federal Register** (65 FR 17345) on section 508 standards on March 31, 2000 and will publish final standards

after analysis of comments received. Federal agencies will be responsible for complaints related to the procurement of accessible electronic and information technologies as of August 7, 2000. The Assistive Technology Act, 29 U.S.C. 3001, also requires that States receiving assistance, including subrecipients, under the State Grants program comply with the requirements of section 508, including the standards developed by the Access Board.

The regulations and standards for section 255 of the Telecommunications Act and section 508 of the Rehabilitation Act will have a profound impact on dozens of stakeholders, including, but not limited to, information technology manufacturers, product designers and engineers, technical writers, marketers, distributors, purchasers of information technologies, web developers and others. Currently there is a dearth of information and technical assistance available for stakeholders and other constituencies on how to comply with these regulations and standards. There is also a limited supply of skilled professionals capable of providing training and support on how to implement the requisite guidelines and standards for electronic and information technology.

A number of Federal agencies are collaborating to promote awareness about accessible electronic and information technologies, the benefits of incorporating universal design into these products, and the need for expanding capacity for training and technical assistance in this field. NIDRR, the General Services Administration, the Federal Communications Commission, and the Access Board are jointly supporting a multifaceted initiative that includes a demonstration center, multiple web pages, and technical assistance and training efforts, in partnership with industrial consortia and professional and trade associations. This priority relates to the need for expanding capacity for technical assistance and training for a broad array of constituents.

Priority: Information Technology Technical Assistance and Training Center

The Assistant Secretary proposes to establish an Information Technology Technical Assistance and Training Center to promote the wide spread use of accessible and usable electronic and information technology and to promote the benefits of universal design. In carrying out these purposes, the Information Technology Technical Assistance and Training Center must:

- Design and implement a needs assessment that will determine the technical assistance and training needs relative to: (a) Implementing the final standards under section 508 of the Rehabilitation Act; (b) the guidelines for section 255 of the Telecommunications Act; and (c) promoting the principles of universal design. The needs assessment should target audiences including, but not limited to, State procurement officers, product designers and engineers, marketers, technical writers, web developers, consumer and disability-related organizations, service providers, human resource professionals, and relevant industrial consortia and professional and trade associations;
- Based upon the findings of the needs assessment, develop, implement and evaluate relevant training materials and instructional modules that meet the requirements of section 255 of the Telecommunications Act and section 508 of the Rehabilitation Act, and address the principles of universal design;
- Develop and disseminate training materials and instructional modules to States receiving AT Act funds on implementing the requirements of section 508 and its standards;
- Provide information, training and technical assistance about section 255 of the Telecommunications Act, section 508 of the Rehabilitation Act, and the principles of universal design to appropriate constituencies, including the information technology and telecommunications industry, relevant industrial consortia, professional and trade associations, and States receiving AT Act funds;
- Collaborate with the General Services Administration, the Federal Communications Commission, and the Access Board by contributing information and materials for the Government wide web site on Section 508;
- Design and implement, in collaboration with the Federal Communications Commission, the Access Board, the Rehabilitation Engineering Research Center on Telecommunications Access and the telecommunications industry, a web site that contains information and instructional materials, including those developed under Activity 2, that can be used by telecommunications designers of equipment and services to develop and fabricate solutions that are in accordance with the guidelines for section 255 of the Telecommunications Act; and
- Identify, implement, and disseminate strategies, in collaboration with industrial consortia and professional and trade associations, that will expand training capacity of the field and increase the knowledge base about accessible and usable electronic and information technology.

In addition to the activities proposed by the applicant to carry out these purposes, the Information Technology Technical Assistance and Training Center must:

- Collaborate with industry, industrial consortia, professional and trade associations, and States receiving AT Act funds on all relevant activities;
- Coordinate on activities of mutual interest with NIDRR-funded projects including the Rehabilitation Engineering Research Centers on Information Technology Access and Telecommunications Access and the Disability and Business Technical Assistance Centers; and
- Collaborate with relevant Federal agencies responsible for the administration of public laws that address access to and usability of electronic and information technology for individuals with disabilities including, but not limited to, the General Services Administration, the Access Board, the Federal Communications Commission, the Rehabilitation Services Administration, and other relevant Federal agencies identified by NIDRR.

Additional Selection Criterion

The Assistant Secretary will use the selection criteria in 34 CFR 350.54 to evaluate applications under this program. The maximum score for all the criteria is 100 points; however, the Assistant Secretary also proposes to use the following criterion so that up to an additional ten points may be earned by an applicant for a total possible score of 110 points:

Within this absolute priority, we will give the following competitive preference to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of those strategies, we will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Applicable Program Regulations: 34 CFR Parts 350 and 353.

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Program Authority: 29 U.S.C. 761a(g) and 762.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects)

Dated: July 3, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–17384 Filed 7–7–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A–4]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications and Pre-application for a New Disability and Rehabilitation Research Project for Fiscal Year 2000

Purpose of the Program: The purpose of the Disability and Rehabilitation Research Project and Centers Program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973. The Assistant Secretary takes this action to focus research attention on an area of national need. The priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

The notice of final funding priority on Information Technology Technical Assistance and Training Center is published elsewhere in this issue of the **Federal Register**.

This notice also invites interested parties to participate in a pre-application meeting to discuss the funding priority for the Information Technology Technical Assistance and Training Center and to receive technical assistance through individual consultation and information about the funding priority. The pre-application meeting will be held on July 31, 2000 at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St. SW, Washington, DC between 10 a.m. and 12 a.m. NIDRR staff will also be available at this location from 1:30 p.m. to 5 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priority. NIDRR will make alternate arrangements to accommodate interested parties who are unable to attend the pre-application meeting in person. For further information contact William Peterson, Switzer Building, room 3425, 330 C Street, SW, Washington, DC 20202. Telephone (202) 205–9192. If you use a TTY, please call (202) 205–4475.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (*e.g.* other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this Notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

This notice supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Deadline for Transmittal of Applications: September 1, 2000.

Application Available: July 15, 2000.

Maximum Award Amount per year: $1,500,000.

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount in any year (See 34 CFR 75.104(b)).

Estimated Number of Awards: 1.

Note: The estimate of funding level and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: 60 months.

Program Authority: 29 U.S.C. 762.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86, and the program regulations 34 CFR Part 350.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue SW, Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW, room 3414, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475.

Internet: Donna_Nangle@ed.gov.

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(Catalog of Federal Domestic Assistance Numbers: 84.133A, Disability and Rehabilitation Research Projects)

Program Authority: 29 U.S.C. 760–764.

Dated: July 3, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–17385 Filed 7–7–00; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Monday,
July 10, 2000

Part XI

The President

Proclamation 7328—To Amend the Generalized System of Preferences

Federal Register
Vol. 65, No. 132
Monday, July 10, 2000

Presidential Documents

Title 3—

The President

Proclamation 7328 of July 6, 2000

To Amend the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Section 502(c)(7) of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2462(c)(7)), provides that, in determining whether to designate any country a beneficiary developing country under this section, the President shall take into account whether that country has taken or is taking steps to afford internationally recognized worker rights to workers in that country. Section 502(d)(1) of the Trade Act (19 U.S.C. 2462(d)(1)) provides that the President may withdraw, suspend, or limit the application of duty-free treatment under the Generalized System of Preferences (GSP) with respect to any designated beneficiary developing country based on consideration of the factors set forth in sections 501 and 502(c) of the Trade Act (19 U.S.C. 2461 and 2462(c)). Section 502(f)(2) of the Trade Act (19 U.S.C. 2462(f)(2)) requires the President to notify the Congress and the affected country, at least 60 days before termination, of the President's intention to terminate the affected country's designation as a beneficiary developing country for purposes of the GSP.

2. Section 502(e) of the Trade Act (19 U.S.C. 2462(e)) provides that the President shall terminate the designation of a country as a beneficiary developing country if the President determines that such country has become a ''high income'' country as defined by the official statistics of the International Bank for Reconstruction and Development. Termination is effective on January 1 of the second year following the year in which such determination is made.

3. Pursuant to section 502(d) of the Trade Act, and having considered the factors set forth in sections 501 and 502(c), I have determined that it is appropriate to suspend Belarus's GSP benefits because it has not taken and is not taking steps to afford workers in that country internationally recognized worker rights. In order to reflect the suspension of benefits under the GSP for articles imported from Belarus, I have determined that it is appropriate to modify general note 4(a) of the Harmonized Tariff Schedule of the United States (HTS).

4. Pursuant to section 502(e) of the Trade Act, I have determined that Malta, French Polynesia, New Caledonia, and Slovenia meet the definition of a ''high income'' country as defined by the official statistics of the International Bank for Reconstruction and Development. Accordingly, pursuant to section 502(e) of the Trade Act, I am terminating the preferential treatment under the GSP for articles that are currently eligible for such treatment and that are imported from Malta, French Polynesia, New Caledonia, and Slovenia, effective January 1, 2002.

5. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to Title V and section 604 of the Trade Act, do proclaim that:

(1) In order to reflect the suspension of benefits under the GSP with respect to Belarus, general note 4(a) of the HTS is modified by deleting ''Belarus'' from the list of independent countries, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 60 days after the date of publication of this proclamation in the **Federal Register**.

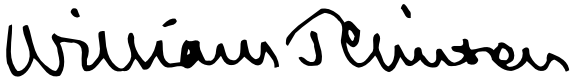
(2) In order to terminate the designation of Malta, French Polynesia, New Caledonia, and Slovenia as beneficiary developing countries under the GSP, general note 4(a) of the HTS is modified by:

(a) deleting ''Malta'' and ''Slovenia'' from the list of independent countries, and

(b) deleting ''French Polynesia'' and ''New Caledonia'' from the list of nonindependent countries and territories, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2002.

(3) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

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



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Federal Register

Vol. 65, No. 132

Monday, July 10, 2000

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FEDERAL REGISTER PAGES AND DATE, JULY

40967–41320 3
41321–41550 5
41551–41864 6
41865–42272 7
42273–42596 10

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamation:
7325 41313
7326 41547
7327 41865
7328 42595

Executive Orders:
13129 (See Notice of June 30, 2000) 41549
13161 41543

Administrative Orders:
Notices:
June 30, 2000 41549
Presidential Determinations:
No. 2000-25 of June 29, 2000 42273

5 CFR

3 41867
178 40967
213 41867
315 41867
550 41868

7 CFR

272 .....41321, 41752
273 .....41321, 41752
274 41321
723 41551
931 41557
947 42275
958 40967
982 40970
985 40973
989 40975
1464 41551

Proposed Rules:
905 41608
927 41018

9 CFR

Proposed Rules:
1 42304
2 42304

10 CFR

Proposed Rules:
54 42305
55 41021

12 CFR

5 41559
915 41560
925 40979
950 40979

14 CFR

35 42278
39 .....40981, 40983, 40985, 40988, 41326, 41869, 41871, 42281
71 .....40990, 40991, 41328, 41329, 41330, 41576
95 41578

Proposed Rules:
13 41528
39 .....41381, 41385, 41884, 42306
71 .....41387, 41388

15 CFR

30 42556
732 42556
740 42556
743 42556
748 42556
750 42556
752 42556
758 42556
762 42556
772 42556
774 42556

17 CFR

211 40992

18 CFR

284 .....41581, 41873

Proposed Rules:
284 41885

20 CFR

404 42283
416 42283

21 CFR

73 .....41581, 41584
178 41874
524 41587
556 41588
558 .....41589, 41876
884 41330

Proposed Rules:
101 41029

20 CFR

404 42283
416 42283

23 CFR

Proposed Rules:
450 41891
771 41892
1410 41891
1420 41892
1430 41892

24 CFR

960 42518
964 42512
982 42508

Proposed Rules:
15 42578

27 41538
290 41538
990 42488

26 CFR

1 ....40993, 41332

Proposed Rules:

1 41610

29 CFR

Proposed Rules:

4022 41610
4044 41610

30 CFR

250 41000

Proposed Rules:

70 42122
72 42068
75 42122
90 42122
250 41892

31 CFR

501 41334
598 41334

32 CFR

199 41002

33 CFR

100 41003
165 ....41004, 41005, 41007, 41009, 41010, 41342, 41590, 42287, 42289

34 CFR

99 41852

37 CFR

Proposed Rules:

1 42309
102 41903
201 41612

39 CFR

111 41877
775 41011

40 CFR

52 ....41344, 41346, 41350, 41352, 41355, 41592, 42290
60 42292
63 ....41594, 42292
180 ....41365, 41594, 41601
261 42292
270 42292
300 41369
712 41371

Proposed Rules:

52 ....41389, 41390, 41391, 42312
81 42312
131 41216
136 41391
141 41031
142 41031
146 42248
300 41392
434 41613

42 CFR

59 41268
409 41128
410 41128
411 41128
413 41128
424 41128
484 41128

45 CFR

1635 41879

47 CFR

73 ....41012, 41013, 41375, 41376, 41377
101 41603

Proposed Rules:

1 41613
2 41032
24 41034
73 ....41035, 41036, 41037, 41393, 41401, 41620, 41621
74 41401
87 41032

48 CFR

501 41377
511 41377
512 41377
525 41377
532 41377
537 41377
552 41377

Proposed Rules:

8 41264
15 41264
44 41264
52 41264
225 41037
242 41038
252 41038

49 CFR

1 41282
209 42529
211 42529
215 41282
220 41282
238 41282
260 41838

Proposed Rules:

613 41891
621 41891
622 41892
623 41892

50 CFR

223 ....42422, 42481
622 ....41015, 41016, 41379
648 41017
679 ....41380, 41883, 42302

Proposed Rules:

17 ....41404, 41405, 41782, 41812, 41917, 42316
25 42318
32 42318
600 41622
622 41041
660 ....41424, 41426
679 41044

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 10, 2000

AGENCY FOR INTERNATIONAL DEVELOPMENT

Acquisition regulations:

Contractor performance evaluation system; published 6-9-00

Correction; published 6-26-00

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

National school lunch and school breakfast programs—

Blended beef, pork, poultry, or seafood products; identification; published 6-8-00

COMMERCE DEPARTMENT

Census Bureau

Foreign trade statistics:

Shipper's Export Declaration or filing export information electronically using automated export system; clarification; published 7-10-00

COMMERCE DEPARTMENT

Export Administration Bureau

Export administration regulations:

Parties to transaction and thier responsibilities, routed export transactions, Shipper's Export Declarations, and export clearance; published 7-10-00

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Hazardous waste combustors; published 7-10-00

Air quality implementation plans; approval and promulgation; various States:

Alabama; published 5-11-00

Oregon; published 5-10-00

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Arizona; published 6-8-00

Indiana; published 5-10-00

Hazardous waste program authorizations:

Oklahoma; published 5-10-00

West Virginia; published 5-10-00

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Arizona; published 6-8-00

Florida; published 6-9-00

Louisiana; published 6-8-00

New Hampshire; published 6-9-00

West Virginia; published 6-9-00

Wyoming; published 6-8-00

Television broadcasting:

Class A television service; establishment; published 5-10-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

New drug applications—

Drug master files; published 1-12-00

Medical devices:

General hospital and personal use devices—

Liquid chemical sterilants/high level and general purpose disinfectants; classification; published 6-8-00

PERSONNEL MANAGEMENT OFFICE

Acquisition regulations:

Federal Employees Health Benefits Program and Defense Department demonstration project and other miscellaneous changes; published 6-8-00

Correction; published 6-26-00

SECURITIES AND EXCHANGE COMMISSION

Securities:

Revised transfer agent form and related rule; published 6-9-00

SOCIAL SECURITY ADMINISTRATION

Social security benefits and supplemental security income:

Federal old age, survivors, and disability insurance and aged, blind, and disabled—

False or misleading statement penalties; administrative procedures; published 7-10-00

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

Boston Harbor, MA; safety zone; published 7-10-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 6-5-00

Honeywell International Inc.; published 6-5-00

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

General railroad system:

Passenger operations and waivers related to shared track use by light rail and conventional equipment; published 7-10-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Winter pears grown in—

Oregon and Washington; comments due by 7-18-00; published 7-3-00

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Bovine spongiform encephalopathy; disease status change—

Denmark; comments due by 7-17-00; published 5-17-00

AGRICULTURE DEPARTMENT

Forest Service

Special areas:

Roadless area conservation; comments due by 7-17-00; published 5-10-00

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Servicing and collection—

Disaster set-aside program; comments due by 7-17-00; published 5-17-00

Special programs:

Lamb Meat Adjustment Assistance Program; comments due by 7-19-00; published 6-21-00

COMMERCE DEPARTMENT

Export Administration Bureau

Export administration regulations:

North Korea; easing of export restrictions; comments due by 7-19-00; published 6-19-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Trawl gear in Gulf of Alaska Central Regulatory Area, seasonal adjustment of closure areas to; comments due by 7-18-00; published 7-3-00

Atlantic highly migratory species—

Atlantic bluefin tuna and swordfish; trade restrictions; comments due by 7-18-00; published 5-24-00

Atlantic swordfish and northern albacore tuna; comments due by 7-18-00; published 5-24-00

North Atlantic swordfish; comments due by 7-18-00; published 6-6-00

Magnuson-Stevens Act provisions—

Domestic fisheries; exempted fishing permits; comments due by 7-21-00; published 7-6-00

DEFENSE DEPARTMENT

Acquisition regulations:

Pollution control and clean air and water; comments due by 7-21-00; published 5-22-00

Profit incentives to produce innovative new technologies; comments due by 7-21-00; published 5-22-00

DEFENSE DEPARTMENT

Engineers Corps

Permits for discharges of dredged or fill material into U.S. waters:

Fill material and discharge of fill material; definitions;

comments due by 7-19-00; published 6-16-00

DEFENSE DEPARTMENT

Navy Department

Privacy Act; implementation; comments due by 7-17-00; published 5-18-00

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans:

Preparation, adoption, and submittal—

Air quality models; guidelines; comments due by 7-20-00; published 4-21-00

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania; correction; comments due by 7-19-00; published 6-19-00

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

California; comments due by 7-19-00; published 6-19-00

Hazardous waste:

Project XL program; site-specific projects—

IBM semiconductor manufacturing facility, Essex Junction, VT; comments due by 7-17-00; published 6-16-00

Permits for discharges of dredged or fill material into U.S. waters:

Fill material and discharge of fill material; definitions; comments due by 7-19-00; published 6-16-00

Superfund program:

National oil and hazardous substances contigency plan—

National priorities list update; comments due by 7-21-00; published 6-21-00

FARM CREDIT ADMINISTRATION

Farm credit system:

Loan policies and operations, etc.—

Other financial institutions lending; comments due by 7-19-00; published 6-26-00

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Personal communications services—

Narrowband rules; modifications; competitive bidding; comments due by 7-19-00; published 7-3-00

Point-to-point and point-to-multipoint common carrier and private operational fixed microwave rules; consolidation; comments due by 7-20-00; published 6-20-00

Radio stations; table of assignments:

California; comments due by 7-17-00; published 6-9-00

Florida; comments due by 7-17-00; published 6-8-00

FEDERAL DEPOSIT INSURANCE CORPORATION

Gramm-Leach-Bliley Act; implementation:

Community Reinvestment Act (CRA)-related agreements; disclosure and reporting; comments due by 7-21-00; published 5-19-00

FEDERAL RESERVE SYSTEM

Gramm-Leach-Bliley Act; implementation:

Community Reinvestment Act (CRA)-related agreements; disclosure and reporting; comments due by 7-21-00; published 5-19-00

FEDERAL TRADE COMMISSION

Comprehensive Smokeless Tobacco Health Education Act of 1986; implementation; comments due by 7-21-00; published 5-8-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

Reclassification of 38 preamendments class III devices into class II; comments due by 7-18-00; published 4-19-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Coverage decisions; criteria; comments due by 7-17-00; published 6-15-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

Medicare and State health care programs; fraud and abuse:

Ambulance restocking safe harbor under anti-kickback statute; comments due by 7-21-00; published 5-22-00

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Manufactured home construction and safety standards:

Smoke alarms; comments due by 7-17-00; published 5-18-00

Privacy Act; implementation; comments due by 7-21-00; published 5-22-00

INTERIOR DEPARTMENT

Indian Affairs Bureau

Tribal government:

Certificate of degree of Indian or Alaska Native blood; documentation requirements and filing, processing, and issuing requirements and standards; comments due by 7-17-00; published 4-18-00

INTERIOR DEPARTMENT

Land Management Bureau

Land resource management:

Recreation permits for public lands; comments due by 7-17-00; published 5-16-00

Correction; comments due by 7-17-00; published 5-30-00

Correction; comments due by 7-17-00; published 5-31-00

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Colorado butterfly plant; comments due by 7-17-00; published 5-17-00

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:

Indian leases; gas valuation regulations; amendments; comments due by 7-17-00; published 6-15-00

Correction; comments due by 7-17-00; published 7-7-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

NASA Inspector General hotline posters; comments due by 7-21-00; published 5-22-00

ARTS AND HUMANITIES, NATIONAL FOUNDATION

National Foundation on the Arts and the Humanities

Federal claims collection; comments due by 7-17-00; published 6-15-00

PERSONNEL MANAGEMENT OFFICE

Retirement:

Federal Employees Retirement System (FERS)—

Intra-agency transfer; automation and simplification of employee recordkeeping; comments due by 7-19-00; published 4-20-00

SMALL BUSINESS ADMINISTRATION

Small business investment companies:

Types of consideration paid by small business excluded from cost of money limitations; comments due by 7-20-00; published 6-20-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airmen certification:

Advanced Qualification Program; comments due by 7-17-00; published 6-16-00

Airworthiness directives:

Boeing; comments due by 7-17-00; published 6-21-00

Dornier; comments due by 7-17-00; published 6-15-00

Eurocopter France; comments due by 7-21-00; published 5-22-00

MD Helicopters Inc.; comments due by 7-17-00; published 5-17-00

Class D airspace; comments due by 7-20-00; published 6-20-00

Jet routes; comments due by 7-17-00; published 6-2-00

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol; viticultural area designations:

Red Mountain, WA; comments due by 7-18-00; published 5-19-00

TREASURY DEPARTMENT

Comptroller of the Currency

Gramm-Leach-Bliley Act; implementation:

Community Reinvestment Act (CRA)-related

agreements; disclosure and reporting; comments due by 7-21-00; published 5-19-00

TREASURY DEPARTMENT

Thrift Supervision Office

Gramm-Leach-Bliley Act; implementation:

Community Reinvestment Act (CRA)-related agreements; disclosure and reporting; comments due by 7-21-00; published 5-19-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S. 761/P.L. 106–229

Electronic Signatures in Global and National Commerce Act (June 30, 2000; 114 Stat. 464)

H.R. 4762/P.L. 106–230

To amend the Internal Revenue Code of 1986 to require 527 organizations to disclose their political activities. (July 1, 2000; 114 Stat. 477)

Last List June 30, 2000

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869–042–00002–1)	22.00	[1] Jan. 1, 2000
4	(869–042–00003–0)	8.50	Jan. 1, 2000
5 Parts:			
1–699	(869–042–00004–8)	43.00	Jan. 1, 2000
700–1199	(869–042–00005–6)	31.00	Jan. 1, 2000
1200–End, 6 (6 Reserved)	(869–042–00006–4)	48.00	Jan. 1, 2000
7 Parts:			
1–26	(869–042–00007–2)	28.00	Jan. 1, 2000
27–52	(869–042–00008–1)	35.00	Jan. 1, 2000
53–209	(869–042–00009–9)	22.00	Jan. 1, 2000
210–299	(869–042–00010–2)	54.00	Jan. 1, 2000
300–399	(869–042–00011–1)	29.00	Jan. 1, 2000
400–699	(869–042–00012–9)	41.00	Jan. 1, 2000
700–899	(869–042–00013–7)	37.00	Jan. 1, 2000
900–999	(869–042–00014–5)	46.00	Jan. 1, 2000
1000–1199	(869–042–00015–3)	18.00	Jan. 1, 2000
1200–1599	(869–042–00016–1)	44.00	Jan. 1, 2000
1600–1899	(869–042–00017–0)	61.00	Jan. 1, 2000
1900–1939	(869–042–00018–8)	21.00	Jan. 1, 2000
1940–1949	(869–042–00019–6)	37.00	Jan. 1, 2000
1950–1999	(869–042–00020–0)	38.00	Jan. 1, 2000
2000–End	(869–042–00021–8)	31.00	Jan. 1, 2000
8	(869–042–00022–6)	41.00	Jan. 1, 2000
9 Parts:			
1–199	(869–042–00023–4)	46.00	Jan. 1, 2000
200–End	(869–042–00024–2)	44.00	Jan. 1, 2000
10 Parts:			
1–50	(869–042–00025–1)	46.00	Jan. 1, 2000
51–199	(869–042–00026–9)	38.00	Jan. 1, 2000
200–499	(869–042–00027–7)	38.00	Jan. 1, 2000
500–End	(869–042–00028–5)	48.00	Jan. 1, 2000
11	(869–042–00029–3)	23.00	Jan. 1, 2000
12 Parts:			
1–199	(869–042–00030–7)	18.00	Jan. 1, 2000
200–219	(869–042–00031–5)	22.00	Jan. 1, 2000
220–299	(869–042–00032–3)	45.00	Jan. 1, 2000
300–499	(869–042–00033–1)	29.00	Jan. 1, 2000
500–599	(869–042–00034–0)	26.00	Jan. 1, 2000
600–End	(869–042–00035–8)	53.00	Jan. 1, 2000
13	(869–042–00036–6)	35.00	Jan. 1, 2000
14 Parts:			
1–59	(869–042–00037–4)	58.00	Jan. 1, 2000
60–139	(869–042–00038–2)	46.00	Jan. 1, 2000
140–199	(869–038–00039–1)	17.00	[4] Jan. 1, 2000
200–1199	(869–042–00040–4)	29.00	Jan. 1, 2000
1200–End	(869–042–00041–2)	25.00	Jan. 1, 2000
15 Parts:			
0–299	(869–042–00042–1)	28.00	Jan. 1, 2000
300–799	(869–042–00043–9)	45.00	Jan. 1, 2000
800–End	(869–042–00044–7)	26.00	Jan. 1, 2000
16 Parts:			
0–999	(869–042–00045–5)	33.00	Jan. 1, 2000
1000–End	(869–042–00046–3)	43.00	Jan. 1, 2000
17 Parts:			
1–199	(869–042–00048–0)	32.00	Apr. 1, 2000
*200–239	(869–042–00049–8)	38.00	Apr. 1, 2000
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
*1–399	(869–042–00051–0)	54.00	Apr. 1, 2000
400–End	(869–042–00052–8)	15.00	Apr. 1, 2000
19 Parts:			
1–140	(869–042–00053–6)	40.00	Apr. 1, 2000
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–1)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–042–00059–5)	26.00	Apr. 1, 2000
100–169	(869–042–00060–9)	30.00	Apr. 1, 2000
170–199	(869–042–00061–7)	29.00	Apr. 1, 2000
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	18.00	Apr. 1, 1999
*500–599	(869–042–00064–1)	31.00	Apr. 1, 2000
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
1300–End	(869–042–00067–6)	15.00	Apr. 1, 2000
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–042–00069–2)	31.00	Apr. 1, 2000
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
*500–699	(869–042–00073–1)	20.00	Apr. 1, 2000
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–042–00075–7)	18.00	[5] Apr. 1, 2000
25	(869–042–00076–5)	52.00	Apr. 1, 2000
26 Parts:			
*§§ 1.0-1–1.60	(869–042–00077–3)	31.00	Apr. 1, 2000
§§ 1.61–1.169	(869–042–00078–1)	56.00	Apr. 1, 2000
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–042–00080–3)	29.00	Apr. 1, 2000
*§§ 1.401–1.440	(869–042–00081–1)	47.00	Apr. 1, 2000
§§ 1.441-1.500	(869-042-00082-0)	36.00	Apr. 1, 2000
§§ 1.501–1.640	(869–038–00083–1)	27.00	[6] Apr. 1, 1999
§§ 1.641–1.850	(869–042–00084–6)	41.00	Apr. 1, 2000
§§ 1.851–1.907	(869–042–00085–4)	43.00	Apr. 1, 2000
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–042–00090–1)	31.00	Apr. 1, 2000
40–49	(869–042–00091–9)	18.00	Apr. 1, 2000
50–299	(869–042–00092–7)	23.00	Apr. 1, 2000
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–042–00094–3)	12.00	Apr. 1, 2000
600–End	(869–042–00095–1)	12.00	Apr. 1, 2000
27 Parts:			
*1–199	(869–042–00096–0)	59.00	Apr. 1, 2000

Title	Stock Number	Price	Revision Date
200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869–038–00098–9)	39.00	July 1, 1999
43-end	(869-038-00099-7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–038–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–038–00102–1)	40.00	[7] July 1, 1999
900–1899	(869–038–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–038–00104–7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869–038–00105–5)	28.00	July 1, 1999
1911–1925	(869–038–00106–3)	18.00	July 1, 1999
1926	(869–038–00107–1)	30.00	July 1, 1999
1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
1–199	(869–038–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–038–00111–0)	35.00	July 1, 1999
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–038–00113–6)	48.00	July 1, 1999
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–038–00114–4)	46.00	July 1, 1999
191–399	(869–038–00115–2)	55.00	July 1, 1999
400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–038–00120–9)	32.00	July 1, 1999
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–038–00126–8)	14.00	[7] July 1, 1999
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87-135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–038–00162–4)	36.00	Oct. 1, 1999
400–429	(869–038–00163–2)	44.00	Oct. 1, 1999
430–End	(869–038–00164–1)	54.00	Oct. 1, 1999
43 Parts:			
1–999	(869–038–00165–9)	32.00	Oct. 1, 1999
1000–end	(869–038–00166–7)	47.00	Oct. 1, 1999
44	(869–038–00167–5)	28.00	Oct. 1, 1999
45 Parts:			
1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–038–00169–1)	16.00	Oct. 1, 1999
500–1199	(869–038–00170–5)	30.00	Oct. 1, 1999
1200–End	(869–038–00171–3)	40.00	Oct. 1, 1999
46 Parts:			
1–40	(869–038–00172–1)	27.00	Oct. 1, 1999
41–69	(869–038–00173–0)	23.00	Oct. 1, 1999
70–89	(869–038–00174–8)	8.00	Oct. 1, 1999
90–139	(869–038–00175–6)	26.00	Oct. 1, 1999
140–155	(869–038–00176–4)	15.00	Oct. 1, 1999
156–165	(869–038–00177–2)	21.00	Oct. 1, 1999
166–199	(869–038–00178–1)	27.00	Oct. 1, 1999
200–499	(869–038–00179–9)	23.00	Oct. 1, 1999
500–End	(869–038–00180–2)	15.00	Oct. 1, 1999
47 Parts:			
0–19	(869–038–00181–1)	39.00	Oct. 1, 1999
20–39	(869–038–00182–9)	26.00	Oct. 1, 1999
40–69	(869–038–00183–7)	26.00	Oct. 1, 1999
70–79	(869–038–00184–5)	39.00	Oct. 1, 1999
80–End	(869–038–00185–3)	40.00	Oct. 1, 1999
48 Chapters:			
1 (Parts 1–51)	(869–038–00186–1)	55.00	Oct. 1, 1999
1 (Parts 52–99)	(869–038–00187–0)	30.00	Oct. 1, 1999
2 (Parts 201–299)	(869–038–00188–8)	36.00	Oct. 1, 1999
3–6	(869–038–00189–6)	27.00	Oct. 1, 1999
7–14	(869–038–00190–0)	35.00	Oct. 1, 1999
15–28	(869–038–00191–8)	36.00	Oct. 1, 1999
29–End	(869–038–00192–6)	25.00	Oct. 1, 1999
49 Parts:			
1–99	(869–038–00193–4)	34.00	Oct. 1, 1999
100–185	(869–038–00194–2)	53.00	Oct. 1, 1999
186–199	(869–038–00195–1)	13.00	Oct. 1, 1999
200–399	(869–038–00196–9)	53.00	Oct. 1, 1999
400–999	(869–038–00197–7)	57.00	Oct. 1, 1999
1000–1199	(869–038–00198–5)	17.00	Oct. 1, 1999
1200–End	(869–038–00199–3)	14.00	Oct. 1, 1999
50 Parts:			
1–199	(869–038–00200–1)	43.00	Oct. 1, 1999
200–599	(869–038–00201–9)	22.00	Oct. 1, 1999

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.